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DIGEST OF DECISIONS; ALLOWABLE COSTS UNDER THE DEFENSE ACQUISIT--ETC(U)

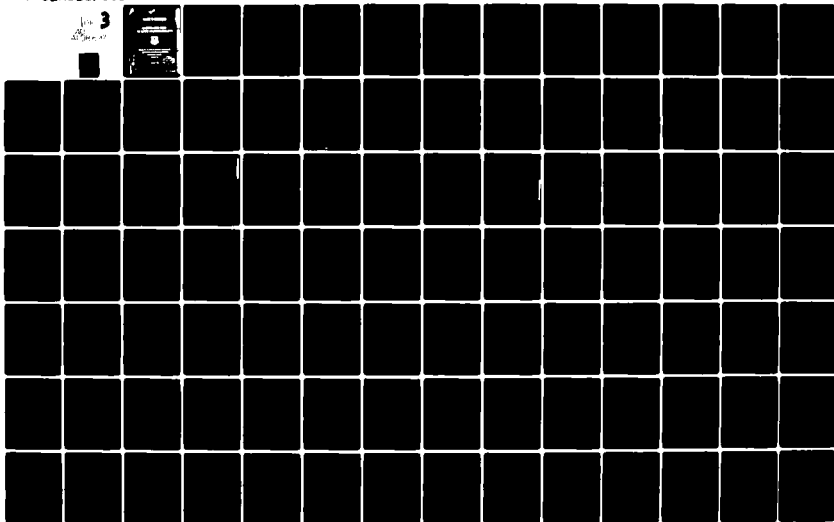
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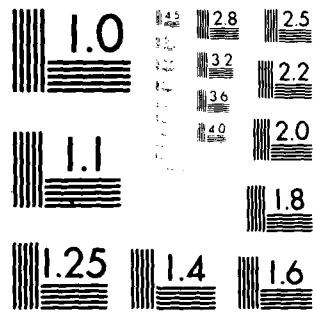
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| REPORT DOCUMENTATION PAGE | | READ INSTRUCTIONS BEFORE COMPLETING FORM |
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| 1. REPORT NUMBER None | 2. GOVT ACCESSION NO. AD-A108 697 | 3. RECIPIENT'S CATALOG NUMBER |
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| 20. ABSTRACT (Continue on reverse side if necessary and identify by block number) A summary of decisions concerning the allowability of costs under DAR, Section 15 | | |

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Instructions For Updating Publication Entitled
"Digest of Decisions - Allowable Costs Under The
Defense Acquisition Regulation"

1. After the semicolon at the end of the list of cases cited after paragraph 4.28 add the following: "McDonnell Douglas Corp., ASBCA 19842, 80-1 BCA 14,327, aff'd. on recon. 80-2 BCA 14,507; Lockheed Corporation and Lockheed Missiles And Space Company, Inc., ASBCA 22451, 80-1 BCA 14,222, aff'd. on recon. 80-2 BCA 14,509; Dynatrend, Inc., ASBCA 23463, 80-2 BCA 14,617; Dayton T. Brown, Inc., ASBCA 22810, 80-2 BCA 14,543; General Dynamics Electronics Division, ASBCA 22995, 80-2 BCA 14,666;"

2. After paragraph 12.13 add the following new paragraphs:

12.14 Method of Allocating B&P Costs Violative of CAS 401.

Contractor's practice of estimating B&P costs using costs indirectly allocated at the corporate level found inconsistent with using raw divisional costs for purpose of the ASPR B&P cost limitation formula, even though the costs allocated at the corporate level were divisionally incurred B&P costs, because the costs lost their identity when accumulated and burdened with overhead in the corporate pool. This inconsistency held to be violative of CAS 401 because using such costs in the B&P cost limitation formula constituted reporting within the meaning of CAS 401. Dayton T. Brown, Inc., ASBCA 22810, 80-2 BCA 14,543. Note that this had the effect of reversing the earlier decision of the Board reported at 78-2 BCA 13,484.

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12.15 Use of Formula Other Than That Specified By DAR.
Contractor held entitled to recover his B&P costs under a formula other than that specified by the DAR because he was a rapidly expanding small business and application of the DAR formula to him produced an inequitable result. His B&P costs were found to be reasonable, and there was no justification for the contracting officer's refusal to exercise his discretion to negotiate an advance agreement to achieve a cost recovery that would be reasonable to both the contractor and the Government. Dynatrend, Inc., ASBCA 23463, 80-2 BCA 14,617.

3. After paragraph 16.16 add the following:

16.17 Charging To G&A As Indirect Expense During Contract Performance vs. Charging As Direct Expense For Equitable Adjustment. Held that a contractor who charged employees' salaries as an indirect expense to his general and administrative expense pools during contract performance could not charge them as direct for the purposes of a contract adjustment because there was a possibility of a duplicate recovery provided by the contractor's ongoing business during the years the work was performed.. Platt Manufacturing Corp., ASBCA 25077, 81-1 BCA 14,894.

4. After paragraph 18.2 add the following new paragraph:

18.3 Employees' Stock Appreciation Rights. Held that costs associated with the exercise by contractor employees of their stock appreciation rights were allowable under DAR Section XV because such stock option rights were more similar to bonuses payable in stocks or cash than to the exercise of employee stock options the costs of which DAR XV makes unallowable. Exercise of the stock appreciation rights (SARs) did not constitute the purchase of anything and was a part of the contractor's incentive compensation program. The Boeing Company, ASBCA 24089, 81-1 BCA 14,864.

5. After paragraph 19.1 add the following:

19.2 Employee Stock Appreciation Rights. See paragraph 18.3 of this publication.

6. At the end of the last line in paragraph 31.17 place an asterisk and place another asterisk at the bottom of that page and write: "Also see Dynatrend, Inc., ASBCA 23463, 80-2 BCA 14617 and other cases decided after the effective date of the Contract Disputes Act of 1978, generally awarding interest to the contractor on his claim after his receipt of a findings and decision letter from the contracting officer."

7. After paragraph 38.7 add the following paragraphs:

38.8 Costs of Exercising Employee Stock Appreciation Rights (SAR). See paragraph 18.3 of this publication.

38.9 Legal Costs of Preparing For A Grandjury Investigation of Contractor. See paragraph 45.39 of this publication.

8. At the end of paragraph 40.1 place a single asterisk and at the bottom of the page place a single asterisk and write beside it: "All patent searching costs incurred in connection with an invention in which the Government has no rights are now specifically prohibited by DAR 15-205.26(b) from being reimbursed to a contractor. Thus, only costs incurred for searching done in connection with inventions in which the Government has some rights may be allowed under the present DAR."

9. At the end of paragraph 40.3 place two asterisks and place two at the bottom of the page and write beside them: "The current version (1980) of DAR 15-205.26(b) specifically states that costs in connection with the filing of United States patent applications 'with respect to which the contract does not require conveying title or a royalty free license to the Government are unallowable' and foreign patent costs are made specifically unallowable by DAR. Therefore, this case is no longer applicable."

10. At the end of paragraph 40.4 place as asterisk and place one at the bottom of the page and write beside it: "Costs allowed in this case could not be allowed under the current (1980) version of DAR 15-205.26."

11. After writing the above statement beside the asterisk at the bottom of the page following the end of paragraph 40.4 write:

"Note: There are no reported ASBCA, other board of contract appeals, or court decisions arising under the present day version of DAR 15-205.26."

12. Change the period at the end of 45.3 to a semicolon and then write "Dynatron, Inc., ASBCA 23463, 80-2 BCA 14,617."

13. After paragraph 45.38 add the following new paragraph:

45.39 Legal Costs Incurred In Preparing For A Grand Jury Investigation. Attorney fees incurred in preparing for a grandjury investigation of possible fraud indictment against contractor involving a Government contract held by him determined to be provisionally reimbursable to him subject to recoupment should he be found guilty of fraud. The John Doe Co., Inc., ASBCA 24576, 80-2 BCA 14,620.

14. Place an asterisk at the end of both paragraphs 55.24 and 55.25 and at the bottom of the page on which the last line of paragraph 55.25 appears place another asterisk and the following note beside it:

"*Note: Upon reconsideration of its original decisions rendered in these cases, the ASBCA affirmed both; and in McDonnell Douglas Corporation, ASBCA 19842, 80-2 BCA 14,507, it held that the Cost Accounting Standards Board has no

authority to issue interpretations apart from its power to issue and modify regulations and that its (CAS Board's) interpretation purportedly issued to clarify what it considered to be a misunderstanding of CAS 403 by the ASBCA, which interpretation was not made in conformance with the statutory requirements placed on it for publishing and submitting regulations to Congress, was not binding on the ASBCA nor a proper interpretation of CAS 403.

McDonnell Douglas Corporation, ASBCA 19842, 80-2 BCA 14,507. It reaffirmed its decision that under CAS 403 contractor was entitled to have its business segments' contribution to income considered as a "factor" for purpose of CAS 403 notwithstanding fact that CAS Board had issued an "interpretation" in which it said that this was not and never was intended to be a "factor" for purposes of CAS 403 application. The ASBCA also reached the same result in Lockheed Corporation And Lockheed Missiles And Space Company, Inc., ASBCA 22451, 80-2 BCA 14,509, concerning the use of segment net income as a "factor" in allocating a state franchise tax to contractor's business segments and in so doing affirmed its prior decision at 80-1 BCA 14,222.

Additional Citations For Inclusion In Table of Cases

The following additional citations of decisions are to be inserted at the appropriate points into the original and updated "Table of Cases" contained in the back of the publication entitled "Digest of Decisions - Allowable Costs Under The Defense Acquisition Regulation":

| | |
|---|--------------------------|
| Boeing Company, the ASBCA 24089, 81-1 BCA 14,864 | 18.3 ; 19.2 ; 38.8 |
| Dayton T. Brown, Inc. ASBCA 2281, 80-2 BCA 14,543 | 4.28; 12.14 |
| Doe, The John Co., Inc. ASBCA 24576, 80-2 BCA 14,620 | 45.39 |
| Dynatrend, Inc. ASBCA 23463, 80-2 BCA 14,617 | 4.28; 12.15; 31.17; 45.3 |
| General Dynamics Electronics Division ASBCA 22995, 80-2 BCA 14,666 | 4.28 |
| Lockheed Corporation And Lockheed Missiles And Space Company, Inc. ASBCA 22451, 80-2 BCA 14,509 | 55.25 |
| McDonnell Douglas Corporation ASBCA 19842, 80-2 BCA 14,507 | 55.25 |
| Platt Manufacturing Corp. ASBCA 25077, 81-1 BCA 14,894 | 16.7 |

Errata and Instructions for Pen and Ink
Corrections of Typographical Errors

1. At end of paragraph 4.23, place an asterisk and place another asterisk at bottom of same page and write the following beside the asterisk at the bottom of the page: "To the same effect see The Boeing Company, ASBCA 19224, 79-1 BCA 13,708."
2. The word "charging" in the seventh line of paragraph 4.27 must be changed to the word "changing" by changing the letter "r" to the letter "n".
3. Change the word "if" to "of" in line three of paragraph 4.28.
4. The word "rules" appearing within the quotation marks in line four of paragraph 4.29 must be changed to the word "sales".
5. Place two asterisks side by side at the end of paragraph 7.2 and two side by side at the bottom of the page and beside the two at the bottom of the page write "However, where he supervises the contract work, that portion of his salary based upon the hours he spent in this effort is properly allocated as a direct cost to the contract and the remainder of it is placed in the contractor's overhead pool. Mac-Well Company, ASBCA 23097, 79-2 BCA 13,895."
6. The word "Contracts" in first line of paragraph 10.7 must be changed to the word "Contractor's".
7. Place an asterisk at end of paragraph 16.2 and one at the bottom of the page it is on and write beside the asterisk at the bottom of the page "However, see the decision cited in the note at the end of 7.2 of this publication."
8. Immediately after paragraph 21.15, write "21.16 Group Life Insurance. See 22.7 of this publication."
9. In next to last line of 30.2, change word "becomes" to "became" and write after period ending last sentence as follows: "However, to date there have been no ASBCA or other board or court decisions interpreting it."
10. In the seventh line of paragraph 31.17, change the word "Intent" to "Interest".
11. Change the period at the end of paragraph 45.3 to a semicolon and then write "Lear Siegler, Inc., ASBCA 20040, 79-1 BCA 13,687."
12. Delete sixth line in paragraph 45.7 in its entirety and also delete first word of line 7.

13. In line six of paragraph 45.12, change the word "bonds" to "banks".

14. Change word "personnel" at end of line eight and beginning of line nine in paragraph 56.16 to "performed", change word "has" in line nine to "was", delete word "by" in line thirteen, and change word "period" in line thirteen to "kind".

15. Insert the pages with the following new paragraphs at the appropriate places in the digest:

1.14; 4.30; 8.18; 22.8; 24.15; 31.18; 31.19; 31.20; 45.37; 45.38; 48.18; 53.9; 55.23; 55.24; and 55.25.

Additional Citations of Decisions in
Table of Cases

Insert the following new additional citations of decisions
in the Table of Cases at the appropriate points:

| | |
|---|-------------|
| A.L.M. Contractors, Inc. 79-2 BCA 14,099 | 31.19 |
| Boeing Co., The 79-1 BCA 13,708 | 4.23; 55.23 |
| Celesco Industries 80-1 BCA 14,271 | 4.30 |
| Honeywell, Inc. 79-1 BCA 13,652 | 48.18 |
| Holt Brothers 79-2 BCA 14,005 | 31.20 |
| Lear Siegler, Inc. 79-1 BCA 13,687 | 45.3 |
| Lockheed Corp & Lockheed Missiles & Space Co., Inc 80-1 BCA 14,222 | 55.24 |
| Mac-Well Company 79-2 BCA 13,895 | 7.2 ; 16.2 |
| McDonnell Douglas Corp 80-1 BCA 14,223 | 55.25 |
| McDonnell Douglas Corp 80-1 BCA 14,327 | 55.25 |
| National Institute for Advanced Studies 79-2 BCA 13,974 | 45.37 |
| Optimal Data Corp 80-1 BCA 14,225 | 8.18 |
| Pathman Construction Co 79-2 BCA 14,027 | 31.18 |
| Potomac Scheduling Co 79-1 BCA 13,793 | 24.15 |
| Ryukyu Stevedoring, Inc 79-2 BCA 13,926 | 53.9 |

Select Contractors, Inc
79-2 BCA 14,155

45.38

Teledyne Ryan Aeronautical, A Division of
Teledyne Industries, Inc, 80-1 BCA 14,251

1.14

1.14

Oral Agreement to Allow Costs that were made Unallowable by ASPR 15-205.23. Fees paid to an affiliated company (subcontractor) by contractor under cost reimbursement contracts were allowable costs under such cost reimbursement contracts even though such fees were subject to disallowance under ASPR 15-205.22(e) because by an advance oral agreement permitted under the provisions of ASPR 15-107 existing prior to 1971 the parties to the prime contracts had agreed that the prime's costs allowable to the subcontractor's effort would for cost allowability purposes be accorded the same treatment accorded them prior to the sub's having become affiliated with prime at which time such fee costs had been allowed. Teledyne Ryan Aeronautical, A Division of Teledyne Industries, Inc., ASBCA 20969, 80-1 BCA 14,251. NOTE: Under the current provisions of DAR 15-107, a contracting officer may not enter into any advance cost understanding agreeing to accept as an allowable cost any cost which is made specifically unallowable by any of the provisions of the DAR, other applicable regulations, or by any statute.

4.30

Accounting Method Changed when Operation of One of Contractor's Business Segments was Discontinued. When contractor discontinued operation of one of its seven business segments it was proper for him to change his method of computing G&A expenses to reflect this major charge in his business; however, his changed method in which he allocated upper management G&A expenses to a newly established pool on a different basis than that on which they were allocated to his other four G&A base and expense pools was not acceptable. He was required to allocate G&A expenses to all divisional pools on the same basis. Celestco Industries, Inc., ASBCA 22402, 80-1 BCA 14,271.

8.18

Change of Method From A One-Pool System to a Two-Pool System. Contractor was not allowed to change his accounting method of allocating overhead from a one-pool system to a two-pool system where he was performing one contract for a fixed price and one on a cost reimbursement basis because such a change would unfairly transfer indirect costs from his fixed price contract to this cost reimbursement contract. Optimal Data Corporation, 80-1 BCA 14,225.

22.8

Sales Commission. A sales commission, which accrued upon payment by the government, held not to be an item of allowable cost in settlement of a convenience termination because it was contingent upon performance and the termination had prevented that contingency from occurring and so the commission did not become a legal obligation owed by the contractor. Rockwell Steel Company, 79-1 BCA 13,845.

24.15

Use of More Than One Method. Held that a contractor must use the same method for calculating depreciation costs on various properties used in performing a contract and may not use differing methods. Potomac Scheduling Company. 79-1 BCA 13,793.

- 31.18 Contract Entered Into Prior to Contract Disputes Act of 1978. Contractor held not entitled to claimed interest on his equitable adjustment claim where contract was entered into prior to effective date of Contract Disputes Act of 1978 and claim was no longer before contracting officer on that date. Pathman Construction Company, 79-2 BCA 14,027.
- 31.19 Claimed Interest on Delayed Progress Payments. Held that contractor was not entitled under any provision of his contract nor under Contract Disputes Act of 1978 to interest on progress payments the government delayed in making to him. The "Payment of Interest on Contractor Claims" clause does not provide broad authorization where there is no dispute as to the contractor's entitlement to the amount being sought by him. A.L.M. Contractors, Inc., ASBCA 23792, 79-2 BCA 14,099.
- 31.20 Where Progress Payments Are Available to Contractor. A contractor's claim for interest not allowable, even though his contract has a clause that would enable it to be paid, where his contract provides for progress payments and he has not asked for them. Holt Brothers, ASBCA 23288, 79-2 BCA 14,005.

45.37 Fringe Benefits. Held that contractor was allowed recovery of fees actually paid to consultants and related overhead where it had initially planned to hire the consultants as employees but had instead retained them as independent contractors. However, the fringe benefit rate of 21% added to the fees paid the consultants was not an allowable or reimbursable cost since the consultants fees were neither direct salaries nor wages and the consultants had not received any employee benefits either as a part of or in addition to the fees paid to them. National Institute For Advanced Studies, ASBCA 23305, 79-2 BCA 13,974.

45.38 Legal Fees Paid For Defending Miller Act Suit. Contractor held not entitled to costs claimed for defending a Miller Act suit because there was no direct connection between the suit and the conduct of the Government alleged by contractor to have been improper. Select Contractors, Inc., 79-2 BCA 14,155.

48.18

Rental Costs Exceeding Costs of Ownership.

Contractor held not entitled to recover rental costs in excess of ownership costs because extensions of contractor's leases were extensions of long term leases rather than being new short term leases as agreed by contractor. DAR 15-205.34 does not permit the subsequent exercise of an unexercised option extending a lease to be considered a new lease but requires that such an unexercised option be treated as an extension of the long term lease from which it arose. Honeywell, Inc., ASBCA 21518, 79-1 BCA 13,652.

53.9

Increases in Severance Payments Made To Employees Under Collective Bargaining Agreement Negotiated After Contract Entered Into. A foreign contractor held entitled under the revision of prices clause of his contract to reimbursement for increases in severance compensation paid to his employees under a collective bargaining agreement entered into after execution of his contract. Ryukyu Stevedoring, Inc., Ltd., ASBCA 21329, 78-1 BCA 13,926. NOTE: This decision appears completely contrary to the DAR (ASPR) policy and provisions concerning severance pay but to have been issued solely to give this foreign contractor the equitable relief he no doubt deserved. However, it is doubtful that the same result would be reached if a U.S. contractor were the appellant under like circumstances.

55.23

Allocation of State and Local Taxes Under CAS 403.

Held that since CAS 403 requires direct allocation of any central payment or accrual to a single segment when it can be specifically identified to that segment, contractor's method of accumulating all of its state and local tax costs in a headquarters account from which it then distributed them to its various segments on the basis of the ratio of employees assigned to each segment to the total number of all employees it employed in the state was improper. In so holding, the Board affirmed its prior decision reported at 77-1 BCA 12,371. The Boeing Company, ASBCA 19224, Jan 31, 1979, 79-1 BCA 13,708.

55.24

Allocation of Taxes Under CAS 403 - Use of Income as A "Factor". Held that contractor's use of net income as a "factor" under CAS 403 in allocating a state franchise tax to its segments doing business in the taxing jurisdiction was proper because taxable income of each segment was measured by the same factors used to determine taxable income for the jurisdiction and recognition of losses was not appropriate because the state had no provision for a refund of franchise taxes in a loss year but, instead, provided for a minimum tax of \$200.00 per corporation under such circumstances. Here contractor used a two step method to allocate the state franchise taxes. He first computed each segment's taxable income by separate accounting apportionment rather than by formula apportionment; and then the franchise taxes actually paid was allocated to each segment by its proportionate share of the total of state income. Lockheed Corporation and Lockheed Missiles And Space Company, Inc., ASBCA 22451, 80-1 BCA 14,222.

55.25

Allocation of Taxes Under CAS 403 - Allocation to Segments Based on Gross Payroll. Held that contractor's method of allocating state income and franchise taxes from its home office to its segments upon the basis of gross payroll did not meet the requirements of CAS 403 in that this method failed to comply with the illustrative base for such taxes that was included in CAS 403.40(b)(4) to individual segments of contractor corporation being taxed because the state formulas used to compute the tax were a rough approximation of income attributable to contractor's operations in each state in which it operated and were an effort by a state to tax that share of income of a multisegmented, interstate corporation allocable to such state. CAS 403 requires a direct link or mechanical calculation which traces the tax to its source and in this case that could not be done. Also held that contractor's allocation of a home office pool of state income and franchise taxes to its segments on the basis of the gross payroll of each segment did not comply with the illustrative allocation base of CAS 403.60(b) because the gross payroll was only a portion of one of the factors on which the franchise tax was based and was not included in the formula used for computing the income tax. Compliance with the illustrative allocation base of CAS 403.60(b) requires allocation of state and local income and franchise taxes by any base approximating a segment's proportionate share of the tax imposed by the jurisdiction on which the segment does business, as measured by the same factors used to determine taxable income for that jurisdiction.

State and local income or franchise taxes computed on the basis of income must under CAS 403 include income as one of the factors of the allocation base because the term "factors" as used in CAS 403 means all figures used in the assessment base. Excluding income from the allocation base would cause a distorted allocation of a cost, one major component of which is income and would cause such allocation to fail to meet the causal requirement of CAS 403. McDonnell Douglas Corp., ASBCA 19842, 80-1 BCA 14,223. However, this contractor's above stated method of allocating franchise and income taxes which is the subject of this decision was held to be proper for its contracts and work done under them prior to the effective date of CAS 403. McDonnell Douglas Corporation, ASBCA 18835, 80-1 BCA 14,327.

FOREWORD

This is the fourth edition of this publication and supersedes all earlier editions. It has been rewritten to bring it up to date; and, like the earlier editions, it has been prepared in a format suitable for retention in a three-ring, looseleaf binder so that additional pages may be incorporated into each of its sections as decisions involving the DAR (formerly the ASPR) cost principles are issued in the future by boards of contract appeals and the courts. The digest of decisions contained in this edition includes those cases cited in the earlier editions as well as all of those published in the years 1976-1978 and through the first quarter of 1979. The purpose of this publication, as with the previous editions, is to provide assistance to military and civilian attorneys of the Air Force in their research of questions involving the allowability or nonallowability of costs under Air Force contracts. To facilitate the use of the body of legal precedent which the decisions digested herein represent, they have been keyed to each of the sections of the DAR, and a table of all cases cited in the digest arranged alphabetically has been attached.

- 1 -

It is felt that this publication can be an invaluable legal research tool to all Air Force attorneys who use it. However, in making use of it, the following must be kept in mind:

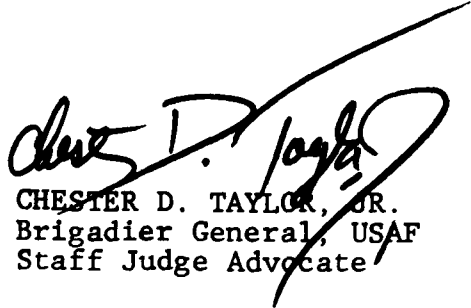
1. The decisions cited in this digest do not purport to be all inclusive nor is the digest intended to capsule each and every legal point contained in or recite all facts involved in each decision cited. Therefore, the user is urged to read the full text of the published opinions in the decisions cited for himself.

2. It must be recognized that most Air Force contracts incorporate the DAR cost principles in effect at the time of contract execution and that because of the changing nature of the DAR a decision cited in the digest which would appear on the surface to be controlling as to a particular current situation may upon closer examination be discovered to have involved a DAR provision differing significantly from the one currently applicable.

3. The DAR (Formerly ASPR) cost principles were used only as a "guide" and were not mandatorily required to be followed in the negotiation of fixed price contracts, the settlement of terminations of such contracts for convenience, or in the negotiation of equitable adjustments to such fixed price contracts prior to 1970. Therefore, decisions having an earlier date than this cited in the digest involving fixed price contracts and amendments to them are no longer controlling as precedent.

4. A small number of cases cited in this digest involve the application of cost principles other than those of the DAR but which are analogous to them such as those of the Federal Procurement Regulation (FPR) and the NASA Procurement Regulation. These decisions are included because they are indicative of what the ASBCA opinion would most likely be on the analogous section of the DAR and because the DAR and the FPR are serving as the base for the Federal Acquisition Regulation (FAR) which is expected to be adopted and made applicable to all Government contracts later this year.

Finally, since the law is ever changing, the user is cautioned to make certain before relying upon them that the decisions digested and cited in this publication have not been modified, reversed, or overruled by subsequent contract appeals board or court decisions.



CHESTER D. TAYLOR, JR.
Brigadier General, USAF
Staff Judge Advocate

DIGEST OF
CONTRACT COST PRINCIPLES AND PROCEDURES

Preamble

Section XV of the Defense Acquisition Regulation (DAR), formerly the Armed Services Procurement Regulation (ASPR), sets forth general cost principles and procedures for the pricing of contracts and contract modifications whenever a cost analysis is performed as required by Section 3-807.2 of the Regulation and for the determination, negotiation, or allowance of costs when such action is required by a contract clause. Section 15-107 of the DAR provides that, to preclude their possible disallowance or their becoming the subject of disputes, certain types of cost as to which reasonableness and allocability might be difficult to determine should be the subject of agreements negotiated with contractors in advance of their incurrence. This Section indicates that such advance agreements should state whether or not and to what extent such costs are to be allowed and should set forth the precise treatment to be accorded them under the contractors' Government contracts. To be valid and binding, they must also generally be negotiated within the guidelines and follow the requirements of this Section 15-107 of the Regulation. The body of legal

precedent currently existing on advance agreements between contracting officers and Government contractors is set forth in the succeeding several paragraphs of the first section of this publication. This is then followed by currently existing legal precedent pertaining to each of the factors affecting the allowability of claimed contract costs and to the specific selected types of costs mentioned in Part 2 of Section XV of the DAR. The appropriate DAR citation applicable to the cases cited on each page of the digest is shown in the upper right hand corner of the page.

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- 22.0 Contingent Costs - DAR 15-205.7.
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- 24.0 Depreciation - DAR 15-205.9.
- 25.0 Employee Morale, Health, Welfare and Food Service
and Dormitory Costs and Credits - DAR 15-205.10.
- 26.0 Entertainment Costs - DAR 15-205.11.
- 27.0 Costs of Idle Facilities and Idle Capacity -
DAR 15-205.12.
- 28.0 Costs of Fines and Penalties - DAR 15-205.13.
- 29.0 DAR 15-205.14 (Reserved) and DAR 15-205.15 (See 21
of this Publication).
- 30.0 Insurance and Indemnification - DAR 15-205.16.
- 31.0 Interest and Other Financial Costs - DAR 15-205.17.
- 32.0 Labor Relations Costs - DAR 15-205.18.
- 33.0 Losses on Other Contracts - DAR 15-205.19.
- 34.0 Maintenance and Repair Costs - DAR 15-205.20.
- 35.0 Manufacturing and Production Engineering Costs -
DAR 15-205.21.
- 36.0 Material Costs (Including Subcontract Costs) -
DAR 15-205.22.
- 37.0 Organization Costs - DAR 15-205.23.
- 38.0 Other Business Expenses - DAR 15-205.24.
- 39.0 Relocation Costs - DAR 15-205.25.

- 40.0 Patent Costs - DAR 15-205.26.
- 41.0 Pension Plans - DAR 15-205.27.
- 42.0 Plant Protection Costs - DAR 15-205.28.
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- 46.0 Gains and Losses on Disposition of Depreciable
Property or Other Capital Assets (Reserved) -
DAR 15-205.32.
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- 48.0 Rental Costs - DAR 15-205.34.
- 49.0 Research and Development Costs - DAR 15-205.35.
- 50.0 Royalties and Other Costs for Use of Patents -
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- 53.0 Severance Pay - DAR 15-205.39.
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DAR 15-205.40.
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- 56.0 Termination Costs - DAR 15-205.42.
- 57.0 Trade, Business, Technical and Professional Activity
Costs - DAR 15-205.43.
- 58.0 Training and Educational Costs - DAR 15-205.44.

- 59.0 Transportation Costs - DAR 15-205.45.
- 60.0 Travel Costs - DAR 15-205.46 and 15-402.3.
- 61.0 Economic Planning Costs (Reserved). DAR 15-205.47.
- 62.0 ADPE Leasing Costs - DAR 15-205.48.
- 63.0 Deferred Research and Development (Reserved).
 DAR 15-205.49.
- 64.0 Cost of Money for Facilities Capital - DAR 15-205.50.

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APPENDIX - DAR SECTION XV PART 2

DIGEST OF DECISIONS

1.0 ADVANCE UNDERSTANDINGS

1.1 Binding on Parties - Advance understandings under ASPR

Section XV need not be made contemporaneously with the contract, and can be binding on both parties.

Sperry Rand Corp., 1964 BCA 4514 (p. 21,659.)

1.2 Implied Agreement - Where CPFF contract was negotiated

on basis that intracompany transfers would include profit as an allowable cost, this constitutes an advance understanding under ASPR 15-107 which takes precedence over the ASPR cost principle (15-205.22(e)) which would otherwise have excluded profit as an allowable cost. Evidence of the pre-contract agreement, not specifically incorporated by the contract, is admissible under exceptions to the parol evidence rule. Yardney Electric Corp., 66-2 BCA 5760.
(see also 8.2).

Government's precontract constructive, if not actual, knowledge and acquiescence in contractor's expressed intent to apply its single overhead rate to direct labor costs to be incurred under the contract and contractor's detrimental reliance thereon held to create an advance understanding by inference or implication and to pre-

clude Government from requiring contractor to change to a different method after completion of contract performance. Symetrics Engineering Corp., NASA BCA 1270-20, 74-1 BCA 10,553. See also Research and Development Corp., ASBCA No. 10913, 69-2 BCA 8017.

- 1.3 Effect of Separate Negotiations - Under current ASPR, results of separate negotiations do not constitute an advance understanding under ASPR 15-107. Further, 15-107 requires that the advance understanding be incorporated in the affected contracts. National Research Corp., 1962 BCA 3526.
- 1.4 Effect on Usual Rules - Parties can agree in CPFF contract that salaries of certain individuals will be charged direct or indirect and that overhead and G&A will not be reimbursable in excess of specified percentages of direct costs. There are simple limitations upon the usual rules of reimbursability of all costs. Agricultural Aviation Engr. Co., 66-1 BCA 5423.
- 1.5 Contracting Officer Approval of Costs
 - 1.5.1 Where costs require C.O. approval and are of type contemplated for reimbursement by the con-

tract, fact C.O. did not grant approval is irrelevant since he had no right to withhold approval under the circumstances. Cornell University, 68-1 BCA 6836 and 6837.

- 1.5.2 Where subcontract required Government approval but such approval was never obtained, neither judgment by subcontractor against prime for an unallowable cost nor prime's legal expenses in unsuccessfully defending the suit are allowable. McDonnell Douglas Corp., 68-2 BCA 7316.

- 1.5.3 ASPR 15-107 requires "special attention" to items of cost in situations where there are no competitive restraints, e.g., in transactions with a subsidiary. (Note Board holds that although Part 1 of Sec XV is not a part of the contract, Government contractors "may well be charged with notice of its contents"). Garrett Corp., 69-2 BCA 7797.

- 1.5.4 Where travel was performed for employee's convenience rather than in performance of contract, and contract required CO.'s approval which was not obtained, travel costs are not allowable (notwithstanding IRS had accepted such costs for tax purposes). R.S. Topas & Co., Inc., 68-2 BCA 7399.

- 1.5.5 Arbitrary denial by C.O. reviewable under "Disputes" procedure. Raymond Int'l & Knudsen of Asia, 65-1 BCA 4843. (See 60.4)
- 1.5.6 A CPFF contract is a cooperative endeavor; however, "he who pays the piper can call the tune". The contractor, in the absence of an advance agreement takes the risk of being wrong. Where the contractor proceeded over the Government's objections, the costs constituted a private venture and were not reimbursable. General Dynamics Corp., 1963, BCA 3685.
- 1.5.7 Where contract does not constitute an agreement that Government will pay certain costs (holiday pay), C.O.'s letter stating the Government would pay was without effect and lacked consideration as an amendment to the contract. TEC Productions Inc., 66-1, BCA 5684.
- 1.6 Allocation Method - Absent an advance agreement, a contract does not "freeze" the contractor's method of allocating G&A expense. Fred D. Wright Co., Inc., 1962 BCA 3432.

- 1.7 Basis for Negotiation of Fee
 See 48.10.
- 1.8 Inferred Agreement - "ASPR 15-107 authorizes only agreements in advance of the incurrence of the costs with which such agreement deals". Actions by parties after execution of contract will not be inferred to constitute an advance agreement to recognize costs. Philco-Ford Corp., 70-2 BCA 8499. See also Codex Corp., ASBCA No. 17983, 74-2 BCA 10,827. Actions by parties prior to execution of the contract may however, constitute an implied agreement or approval. Research and Development Corp., ASBCA No. 10913, 69-2 BCA 8017; Symetrics Engineering Corp., 74-1 BCA 10,553.
- 1.9 Approval of Accounting Practice. Advance approval of contractor's accounting system and practices is not per se determinative of allowability of specific costs. Chrysler Corporation, ASBCA 14385, 71-1 BCA 8779.
- 1.10 Not Required - Advance agreements are not an absolute requirement. Therefore, absence of an advance agreement does not make specific costs unallowable.

Technical Communications Corp., ASBCA 11931, 67-2
BCA 6525; North American Rockwell Corp., ASBCA
15863, 72-2 BCA 9490.

Other leading cases on Advance Agreements include:

General Precision, Inc., ASBCA 11968, 67-2 BCA
6718; G.G. Dewey, ASBCA 13221, 69-1 BCA 7732;
LTV Aerospace Corp., ASBCA 11161, 67-2 BCA 6406;
Associated Aero Science Laboratories, Inc., ASBCA
12139, 67-2 BCA 6618.

Note: Since DPC 84, Advance Agreements are specifically required for IR&D and Bid and Proposal Costs to be allowable under certain DOD contracts.

- 1.11 Specifically Required. Deferred IR&D costs incurred in development of a data terminal set ultimately purchased by the Government as an unpriced line item under a fixed price contract held not allowable under the contract because they did not meet the specified allowability conditions for IR&D costs incurred in performing the contract and there was no advance understanding making them allowable. Rockwell International Corp., ASBCA 20304, 76-2 BCA 12,131.

- 1.12 Oral Agreement. Contractor held entitled under terminated letter contract to reimbursement for facilities costs incurred pursuant to an advance oral understanding that such costs would be paid by the Government under the contract to be definitized later even though the letter contract did not mention such advance understanding. American Electric, Inc., ASBCA 16635, 76-2 BCA 12,151.
- 1.13 Bid and Proposal Costs. Contractor held not entitled to recover bid and proposal costs incurred for a period preceding the effective date of his advance agreement covering B&P costs. International Business Machines Corp., 77-1 BCA 12,293.

2.0 COMPOSITION OF TOTAL COST AND FACTORS
AFFECTING ALLOWABILITY OF COSTS

- 2.1 Definition. Contractor held not entitled to reimbursement of an alleged training cost as a part of his contract costs which cost he had not incurred, was not obligated to incur, and did not plan to incur. Therefore, under the definition of "the total cost of a contract" set out in DAR 15-201.1 this item would not be a cost of the contractor's Government contract. Opportunities Industrialization Centers, International, Inc., ASBCA 20605, 78-2 BCA 13,385.
- 2.2 Generally Accepted Method. Contractor's established practice of collecting the cost of special facilities in a special pool and allocating to contracts based on engineering direct labor hours is equitable and proper under ASPR 15-201.1, notwithstanding the result is to charge costs to contracts not receiving any benefit from the facilities. McDonnell Douglas Corp., 69-2 BCA 8063.

2.3 Factors Affecting Allowability of Costs

- 2.3.1 Excluded Costs. If costs are limited or excluded by law, regulation, or contract, then questions of generally accepted accounting principles, allocability, and reasonableness are not relevant. General Dynamics Corp., 68-2 BCA 7297.
- 2.3.2 Selected Costs. If cost is unallowable under the cost principles relating to specific types of costs (e.g., contributions and donations), the questions of reasonableness and allocability are not reached; i.e., the type of cost must be found to be not unallowable under the cost principles before considering questions of reasonableness and allocability. Lockheed Aircraft Co., 66-2 BCA 5948, (affirming 66-2 BCA 5881).
- 2.3.3 Accounting Practice. "Costs allowable under the ASPR cost principles are not necessarily allowable if not in accordance with the consistent accounting practices of the contractor." Federal Electric Corp., 67-2 BCA 6416, (citing 1964 BCA 4312, recon. denied 1964 BCA 4477).

- 2.3.4 Approval of Accounting Practice. Not determinative in itself of reimbursability. United Technology Center, 68-2 BCA 7350; Chrysler Corp., ASBCA 14385, 71-1 BCA 8779.
- 2.3.5 Effective Date of Section XV Cost Principles. Where additional, severable work is added by S/A, and S/A incorporates new general provisions which include clause referring to ASPR Section XV in effect as of the date of the contract, then the ASPR in effect as of the date of the S/A applies to the additional work. Mauch Laboratories, Inc., 1964 BCA 4023.
- 2.3.6 Negotiation of Fee. "ASPR Section XV recognizes that what would normally be disallowed as a cost should be treated as an allowable cost if the fixed fee were negotiated with the understanding that such cost item would be allowed." Sanders Assoc., Inc., 65-2 BCA 4942.

3.0 DEFINITION OF REASONABLENESS

- 3.1 Relation to Other Factors. ASBCA rejects contractor's argument that general statement of reasonableness in ASPR 15-201.3 ("not exceed that which would be incurred by an ordinarily prudent person", etc.) supersedes all other provisions concerning allow-ability. Aro, Inc., 69-2 BCA 7868.
- 3.2 Decision to Incur Cost. Reasonableness test includes both the dollar amount and the action in incurring the cost. General Dynamics Corp., 1963 BCA 3685. Off'd. General Dynamics v. U.S., 187 Ct. Cl. 697.
- 3.3 Competitive Rates. Upon termination for convenience, Government cannot disallow overhead costs merely because the rates are "unreasonable" or "not com-petitive". Stanley Aviation Corp., 68-2 BCA 7081.
- 3.4 IR&D. In absence of advance agreement, contractor entitled to 100% reimbursement for IR&D when total expenditures for IR&D (\$8,079 vs. \$14,000 budgeted) are not unreasonable (Expenditures 2.5% of sales).

ASPR 15-205.35(h) does not make reimbursement of 100% of costs unreasonable per se. Technical Communications Corp., 67-2 BCA 6525.

- 3.5 B&P. Construction of prototype or experimental airplane, in secret, is not B&P (is independent development) - but if it were, would be unreasonable in amount. General Dynamics Corp., 68-2 BCA 7297.
- 3.6 B&P. Cost of development and construction of Low Altitude Land Observation (LALO) reconnaissance units (\$200K), which eventually resulted in two R&D contracts for \$1.5M, is not allowable as B&P expense (even though film of units used to support unsolicited proposal), since there is an "unsurmountable question of reasonableness". General Dynamics Corp., 70-1 BCA 8143.
- 3.7 Attorney's Fees. Under circumstances where particular expertise was needed, fee of \$100 per hour was not unreasonable. Cryo-Sonics, Inc., 70-1 BCA 8313.
- 3.8 Subcontractor Costs. Claimed subcontractor costs were unreasonable where they included amounts for items

which prime did not in fact receive from sub and contingency costs of subcontractor. Grumman Aerospace Corp., ASBCA 11725, 71-1 BCA 8881.

Subcontractor costs held reasonable where prime acted reasonably under circumstances in settling claims of sub. Teledyne Industries, ASBCA 18049, 73-2 BCA 10088.

- 3.9 Special Tooling. Total of special tooling costs held unreasonable where contractor failed to protect Government's interests and only one-half of such total allowed for that reason. Manuel M. Liodas, Trustee in Bankruptcy, ASBCA 12829, 71-2 BCA 9015.
- 3.10 Management Involvement. Costs resulting from unnecessary management were unreasonable. Optimum Designs, Inc., ASBCA 15441, 73-2 BCA 10072.
- 3.11 Use of Wrong Equipment. Costs resulting from contractor's use of wrong equipment were unreasonable. DeMauro Construction Co., ASBCA 12514, 73-1 BCA 9830.
- 3.12 Replica of First Aircraft. Contractor's cost in fabricating exact replica of its first aircraft produced and flying same to commemorate contractor's 50th

anniversary were unreasonable. The Boeing Company, ASBCA 14370, 73-2 BCA 10,325. Case also contains innumerable other applications of ASPR XV cost principles to a variety of claimed costs.

- 3.13 Pension Plan Contribution. Contractor's contribution to its employees' pension fund held unreasonable where not in accordance with sound accounting and actuarial practices and fund was already overfunded because contractor had made contributions to it on the basis of all employees appearing on its payroll including those not covered by or participating in its employee pension plan instead of having made its contributions on the basis of having excluded such nonparticipating employees and others who could never reasonably expect to benefit from the plan. Sanders Associates, Inc., ASBCA 15518, 73-2 BCA 10,055.

- 3.14 Employee Field Adjustment Pay. Contractor held entitled to reimbursement for field adjustment pay given its employees on the Apollo program under a plan established to insure that they would stay on the job for action in paying such added compensation was prudent and amounts paid were not unreasonable under the facts and circumstances present. Grumman Aerospace Corp., 76-1 BCA 11,671.

3.15 Employee Pension and Group Life Insurance Plans.

Contractor held entitled to reimbursement of costs of employee pension and group life insurance plans which were considerably more liberal than such plans of other contractor employers in the same or comparable businesses because the total cost of his complete employee fringe benefit package, which did not include several benefits given by other contractors to their employees, was reasonable when compared to the total cost of the complete employee fringe benefit package of other contractors in a like or similar business. Lulejian and Associates, Inc., ASBCA 20094, 76-1 BCA 11,880.

3.16 Executive Salaries and Cash Bonuses. Where salaries

and cash bonuses paid to contractor executives are comparable in amount to those paid to offerors and executives of other contractors performing like or similar jobs they are reasonable and allowable; but to the extent they exceed the amounts being paid by other contractors for performance of like or similar jobs, they are unreasonable and not reimbursable as contract costs. Lulejian and Associates, Inc., supra. (4.15)

3.17 Trade, Business, or Professional Activity Meetings.

Costs of lunches and dinners at which contractor officials, while not travelling away from home allegedly discussed business matters with associates, held unallowable as a business activity cost because the meetings at which such costs were incurred were scheduled for the convenience of the participants, their wives attended, and there was no showing that these were other than social meetings for entertainment purposes. However, the cost of meals served at a Board of Directors meeting on a Sunday were held allowable. Lulejian and Associates, Inc., supra (4.15)

Other Leading Cases on Reasonableness of Costs:

Bruce Const. Corp. v. U.S., 163 Ct. Cl. 97, 324 F. 2d 516; James Ippolito & Co., ASBCA 14538, 70-2 BCA 8386; Itek Corp., ASBCA 13528, 71-1 BCA 8906; General Dynamics Corp., ASBCA 8759 et al, 66-1 BCA 5368; General Dynamics Corp., ASBCA 3539, 58-1 BCA 1783; Aeronca Manufacturing Corp., ASBCA 3844, 58-1 BCA 1724, The Boeing Co., ASBCA 10524, 67-1 BCA 6350; Martin Marietta Corp., ASBCA 12143, 69-1 BCA 7506; Olin Corp., ASBCA 15688 and 15818, 72-2 BCA 9539; Grumman Aerospace Corp., 76-1 BCA 11,763; Pacific

DAR 15-201.3

Architects & Engineers, Inc., 76-2 BCA 11,953;
Hirsch Tyler Co., 76-2 BCA 12,075; The Stanwick
Corp., 76-2 BCA 12,114.

4.0 DEFINITION OF ALLOCABILITY

- 4.1 "Necessary" costs - Benefit to Government. Cost of obtaining domestic patents properly allocable to Government contracts, since it is a "necessary" cost of doing business. ASPR 15-201.4(i), (ii), and (iii) are in the disjunctive; i.e., need only meet one of them to be allowable. Expenses which are absolutely necessary for operation of business are per se beneficial to Government contracts; as the absolute necessity decreases, the contractor's burden to show a benefit or other equitable relationship to Government contracts increases. TRW Systems Group of TRW, Inc., 68-2 BCA 7117 (see 40.3 and 44.4). See also Thiokol Chemical Corp., 76-1 BCA 11,731.
- 4.2 Government vs. Commercial. Overhead associated with unused capacity required to be held in stand-by for performance of Government CPFF may be charged 100% to that contract; Government would have legitimate objection if had been commercial contract and attempted to allocate portions of costs to Government contracts. Unusual circumstances require abnormal allocations of costs. Fred D. Wright Co., Inc., 1962 BCA 3432. (see 55.5 re personal property taxes on Government vs. commercial inventories).

- 4.3 Multiple Selling Expense Pools. See 51.1.
- 4.4 Cost-Sharing IR&D Agreement. See 49.2 - Board
 indicates it might have questioned allocability of
 the costs to Government contracts, but Government
 did not present the issue. General Dynamics Corp.,
 66-1 BCA 5680.
- 4.5 Provisional Rates vs. Actual Costs. Allocation method
 used for determining provisional rates set forth in
 the contract need not be used for allocating actual
 costs. E.B. Steele Co., Inc., 66-1 BCA 5656. See
 also The Boeing Company, 73-2 BCA 10,325; Hayes
 International Corp., 75-1 BCA 11,076; General Dynamics
 Corp., Electric Boat Div., 75-2 BCA 11,521.
- 4.6 Simple vs. Artificial Method. Board adopts contractor's
 allocation method which is simple and accounts for
 all the overhead, rather than the Government's
 method, which was artificial and had the effect of
 "losing" some of the overhead. Ibid.
- 4.7 Calculation vs. Allocation. Contractor cannot calculate
 overhead rate on a cost-of-sales basis and then
 allocate overhead expense of a cost-incurred basis,

notwithstanding contractor had used that method consistently. Method used must not produce an unreasonable result in a particular situation. R.W. Borrowdale Co., 69-1 BCA 7564.

- 4.8 Benefit to Government. Legal fees in defending claim for what would be an allowable cost are allowable since Government receives benefit. (See 45.7). Riblet Tramway Co., 66-1 BCA 5488. See also Blue Cross Association, ASBCA 20338, 76-1 BCA 11,828.
- 4.9 Benefit to Government. Need not be susceptible of precise mathematical measurement. General Dynamics/Astronautics, 1962 BCA 3391 (see 23.4).
- 4.10 Change in Method. Government's failure to object to existing method of allocation being used precluded it from requiring contractor to retroactively change its method of allocation. Peninsular Chemresearch, Inc., ASBCA 14384, 71-2 BCA 9066. Wolf Research and Development Corp., ASBCA, 69-2 BCA 8017. Martin - Marietta Corp., ASBCA 14159, 71-1 BCA 8783. See also E-Systems, Inc., ASBCA 18877, 76-1 BCA 11,797 and The Stanwick Corp., ASBCA 18083, 76-2 BCA 12,114.

Contractor allowed to change method in order to receive reimbursement for 100% of allowable overhead costs when system existing at contract execution would have resulted in his being reimbursed for only 50% of his total allowable overhead costs. Radio Corporation of America, ASBCA 13524, 71-1 BCA 8880.

- 4.11 Change in Business Mix. Because of a change in the mix of the contractor's business resulting from large increase in commercial work, his cost-of-sales method of allocating G&A became inequitable to Government and he was required to change method of allocation on a prospective, not retroactive, basis to a cost-incurred method. Contractor was also required to make an adjustment for in-process inventory as of the effective date of the change in method of allocating G&A to preclude his receiving the windfall which would have resulted had this inventory escaped its proper share of G&A expense. A.C. Electronics Division General Motors, ASBCA 14388 et al, 72-2 BCA 9588; 72-2 BCA 9736.

- 4.12 Allocation Base. A contractor's complete fiscal year, rather than a period of every 6 months, was a proper base period for allocation of indirect expenses under

a cost reimbursement contract, even though contract performance was only 6 months, where Government failed to show that use of such a base period, which was in accordance with contractor's accounting practices either caused inequities in the allocation of costs to the contract or that it was a general practice in contractor's industry to use a shorter period than one year as the allocation base. Nash-Hammond, Inc., ASBCA 15563, 71-2 BCA 9166. Where contract provided for reimbursement of G&A costs to extent they were reasonably and properly allocable to the base cost of direct labor reimbursed under the contract, G&A costs allocated on a base of contractor's manufacturing costs was not reimbursable under contract even though this was in accordance with contractor's established accounting practice. Radio Corporation of America, ASBCA 13524, 71-1 BCA 8880.

- 4.13 Manufacturing Overhead. Proper method for allocation of Contractor's manufacturing overhead to work done under a specific change order was to use the direct labor costs as the allocation base rather than using total labor and material costs as the base as con-

tractor contended he should be permitted to do.
Elliott Machine Works, Inc., ASBCA 16135, 72-2
BCA 9501.

- 4.14 Equitable Adjustments. Contractor permitted to include in overhead allocated to contract work costs portion of an equitable adjustment items of indirect expenses such as advertising, legal fees and charitable contributions because ASPR cost principles making such costs unallowable were not mandatory for application to fixed price contracts at time contract was executed. A Campo, Inc., ASBCA 11362, 69-1 BCA 7564 and Keco Industries, Inc., ASBCA 15131 72-1 BCA 9262.
- 4.15 Post Contract Completion Costs. Costs incurred after completion of contract performance not shown to have been incurred as a result of performance were not allocable and, therefore, not allowable. Mar-Pak, ASBCA 1439 et al, 71-2 BCA 9034.
- 4.16 Notice Prior to Change of Method. A contractor is entitled to a reasonably adequate notice before he can be required to prospectively change his method of allocation where his existing method has for a long time been consistent with generally accepted

accounting practices; and issuance to him of a DD 396 constitutes reasonable authoritative notice. Litton Systems, Inc., v. U.S., 449 F.2d 392 Ct. Cl. 1971).

- 4.17 Defending Against Court Suits. Legal costs incurred in defending suit arising from guaranty under commercial sales contract are not allocable to Government work for they are either direct costs of the commercial contract involved or indirect costs of commercial business. Dynalectron Corp., ASBCA 16895, 73-1 BCA 9909.
- 4.18 Burdening of Unallowable Costs. It was held improper to charge G&A or fixed overhead to unallowable costs but was proper to charge variable overhead to unallowable costs. Martin Marietta Corp., ASBCA 14159, 71-1 BCA 8783.
- 4.19 Bid and Proposal Cost for Commercial Business. Contractor's bid and proposal costs incurred in seeking commercial business held allowable to Government contracts because getting such commercial work was basic to contractor's viability and continuing existence and were of a general benefit to the Government.

However, costs incurred by it under a separate provision unrelated to its Government programs were not shown to have any benefit to the Government as a loss of customers or to be necessary for contractor's continued existence so were not allowable to its Government contracts. General Dynamics Corp., Electric Boat Division, 75-2 BCA 11,521.

- 4.20 Change in Method. Change in method of allocating employee separatory expenses from one under which contractor accruals for such expenses were charged against all work performed in its plant in a direct labor hour basis to one by which it charged separation allowance payments made to terminated employees directly against a terminated contract as termination costs held to be improper and unallowable since contractor did not show that the separations for which allowances had been paid had been abnormal. Detroit Diesel Allison Division, General Motors Corp., ASBCA 20199, 77-1 BCA 12,414.

- 4.21 Employee Fringe Benefits. Contractor held entitled to reimbursement of personnel department fringe benefit costs allocated to a non-production contract employing only a small number of the contractor's

employees who received the fringe benefits because such costs were part of contractor's total compensation plan, benefitted all of the contracts performed at the facility which was used solely for Government contracts, were consistently treated as a separate cost center, and under contractor's accounting procedures were charged to all contracts performed in the facility on a "pay-as-you-go" basis. Detroit Diesel Allison Division, General Motors Corp., ASBCA 20909, 77-1 BCA 12,397.

- 4.22 Offsite Commercial Facility Overhead. Contractor held not entitled to allocate through its single overhead pool and charged to its Government contract any of its overhead costs incurred in operating an offsite commercial facility to manufacture seatbelt analyzers since such allocation was not in any way based upon the relative benefits received by the Government under its contract but had been made to both its commercial user and Government work on the basis of direct labor hours which did not distribute the costs in reasonable proportion to the benefits received. Furthermore the costs incurred at contractor's offsite commercial facility were not necessary to the overall

operation of contractor's business within the meaning of ASPR 15-201.4 but had a direct relationship to a particular cost objective, to wit, the commercial seatbelt analyzer venture. Chrysler Corp., 77-1 BCA 12,482.

- 4.23 Cost Accounting Standards. Contractor's use of a headcount method for allocation of property, sales, use, fuel, and vehicle taxes held not permissible under Cost Accounting Standard 403(b)(4) because it did not reflect the basis on which the taxes were assessed. Under its headcount method, contractor accumulated costs in a headquarters account and allocated on the basis of the number of persons employed at each segment compared to the total persons employed at all four of its segments. Not only was this an improper method for allocating income taxes since Cost Accounting Standard 403.60(b) requires that such taxes be allocated on the basis of their assessment. This Standard required that contractor identify and allocate income taxes to the individual physical segments of its business to the maximum extent practical. This Standard also required that contractor's allocation of a city business license tax levied on the basis of the number of its employees

performing their duties within the city which contractor had allocated on the basis of relative headcount of each of its segments in the state to the local state headcount of its employees, be allocated instead by headcount on the basis of only its business segments within the taxing jurisdiction. Held further that words "identified specifically with" individual segments as used in Cost Accounting Standard 403.40(b)(4) did not permit measuring benefits received from community services on a headcount basis as contractor contended notwithstanding part contractor had been allowed by earlier decisions of the ASBCA under ASPR 15-202 prior to existence of this Cost Accounting Standard to do so. Cost Accounting Standard 403.40(b)(4) contemplates that a benefited segment's share of a tax payment will be measured by a base that will measure the proportionate contribution to the factors that constitute the assessment base of the tax. Held that allocations of property, sales, fuel, and vehicle taxes on an assessment basis to business segments meets the criteria of Cost Accounting Standard 403.40(a)(1) requiring direct allocation "to the maximum extent possible" because the costs were significant and could be traced to specific segments.

This decision in effect reversed the ASBCA's earlier decision in The Boeing Company, ASBCA 11866, 69-2 BCA 7898; on recon. 70-1 BCA 8298 allowing it to use a headcount method for allocating taxes from a headquarters pool to its various segments regardless of what had been the basis for such taxes being levied. The Boeing Company, ASBCA 19224, 77-1 BCA 12,371.

- 4.24 Long Range Organization Planning. ASBCA held that contractor's pre-1969 costs of contractor incurred in long range organization planning were allowable under ASPR 15-205.47 existing at that time because such costs were necessary to contractor's overall business operation; and, since they benefitted contractor's Government contracts they were allowable to them under ASPR 15-201.4(iii). Dynalelectron Corp., ASBCA 20240, 77-2 BCA 12,835.

- 4.25 Direct Labor Hours v. Total Cost Input as Base. The ASBCA held that contractor would recover G&A expenses by using direct labor costs as a base for distribution of G&A, rather than using a total cost input base for their distribution, because the direct labor cost base was a generally accepted accounting

method which had been consistently used by contractor for many years and was not unfair to the Government. General Dynamics Corporation, Convair Division, ASBCA 22461, 78-2 BCA 13,270.

- 4.26 Salary of Employee who Performed Work for Commercial Clients. Held that salary costs and G&A expenses for a contractor's employee who performed work only for its commercial clients were properly disallowed since the work performed was outside the scope of the contractor's Government contract. Environmental Associates, Inc., 78-2 BCA 13,392.
- 4.27 Facility Expenses. Held that contractor was not allowed to charge its "Facility Expenses" as direct expenses of a cost type contract because the contract required that such expenses be charged as indirect expenses and provided that they would be allocated to indirect costs to the contract and the contractor was not justified in charging his allocation of such expenses from indirect to direct expenses. Booker T. Washington Foundation, 79-1 BCA 13,574.

4.28

Change From A One Pool to A Two Pool System of Allocating Overhead. Contractor held not entitled

to change his accounting method if allocating his overhead costs from a one pool to a two pool system because the change would unfairly transfer indirect costs from his fixed price contract to his cost reimbursable contract. Optimal Data Corp., 79-1 BCA 13,624.

Other Leading cases on Allocability of Costs include:

Lockheed Aircraft Corp. v. U.S., 179 Ct. Cl. 545;
Singer-General Precision, Inc. V. U.S., 192 Ct. Cl. 435; North American Rockwell Corp., ASBCA 13067, 69-2 BCA 7812; General Dynamics Corp., ASBCA 9842, 65-2 BCA 5067; The Boeing Company, ASBCA 11866, 69-2 BCA 7898; Gov't Mot. for Recon. den., 70-1 BCA 8298; Federal Electric Corp., ASBCA 11324, 67-2 BCA 6416; Elliott Machine Works, ASBCA 16135, 72-2 BCA 9501; General Dynamics Corp., ASBCA 13868, 69-2 BCA 8044; Martin-Marietta Corp., ASBCA 14159, 71-1 BCA 8783; Peninsular Chem-Research, Inc., ASBCA 14384, 71-2 BCA 9066; Nash-Hammond, ASBCA 15563, 71-2 BCA 9166; Thiokol Chemical Corp., 76-1 BCA 11,731; Blue Cross Association, ASBCA 20080, 76-2 BCA 12,112;

The Stanwick Corp., ASBCA 18083, 76-2 BCA 12,114;
The Boeing Co., ASBCA 18948, 76-2 BCA 11,985;
Blue Cross Association, ASBCA 20338, 76-1 BCA
11,828; American Electric, Inc., ASBCA 16635, 76-2
BCA 12,151, Celesco Industries, Inc., ASBCA
20569, 77-1 BCA 12,445.

- 4.29 Cost Accounting Standard 410. Cost Standard 410,
entitled Allocation of Business Unit General &
Administrative (G&A) Expense to Final Cost Objectives,
prohibits the use of a "cost of rules" base for
allocating G&A expenses and only permits use of a
"cost input" base for the purpose.

5.0 CREDITS

- 5.1 Erroneous Payments. Contractor must refund sums
Government erroneously paid as reimbursable costs
where such costs not in fact allowable. Peat, et
al, 70-2 BCA 8394.
- 5.2 Taxes. Refunds are reduction of costs rather than
income, and Government should share in same per-
centage as shared in costs in year involved.
Northrup Corp., 1964 BCA 4102.
- 5.3 Insurance. Where contractor and its employees received
refunds on insurance premiums, contractor is re-
quired to credit overhead only for its portion of
the overhead, and not for employees' portion, not-
withstanding Government had paid contractor for
employees' salaries from which their contributions
were paid. California Institute of Technology (JPL),
69-1 BCA 7624. See also RMK-BRJ, A Joint Adventure
ASBCA 16031, 74-1 BCA 10,585.
- 5.4 Liquidated Damages. Reduction in liquidated damages
previously allowed as overhead cost must be passed
on as credit to Government where reduction resulted

from contractor's decision to acquire land under lease option. University of Illinois, 69-1 BCA 7638.

- 5.5 State Tax Refund. Held that contractor must allocate as a credit to his Government CPFF contracts their fair share of state tax refund it received in order to reduce Government's costs even though contractor contended amount received from the state was a tax subsidy given to subsidize the company in a loss year. Grumman Aerospace Corp., ASBCA 18590, 75-2 BCA 11,492. Aff'd. Grumman Aerospace Corp. v. U.S., Ct. Cl. (15 Nov 1978).

6.0 ACCOUNTING FOR UNALLOWABLE COSTS

DAR 15-201.6 incorporates Cost Accounting Standards Board's Cost Accounting Standard 405 in its entirety and directs its use in accounting for unallowable costs of contractors in all contracts to which Part 2 of this section of the DAR applies. However, to date there have been no ASBCA or Court cases interpreting this CAS as it applies to contractor costs.

7.0 DIRECT COSTS*

- 7.1 President's Salary. Government cannot disallow 50% of corporate President's salary on the basis his activities did not benefit Government contracts. Entire salary should be charged to overhead and allocated to all of corporation's business. Vare Industries, Inc., 68-2 BCA 7120.
- 7.2 President's Salary. In absence of convincing evidence that President of company devoted efforts specifically to the contract rather than management of business in general, improper to charge portion of his salary direct to CPFF contract. Should include total salary in overhead pool. Airtech Services, Inc., 68-2 BCA 7290.
- 7.3 President's Salary. May be charged direct to CPFF contract pursuant to specific contract provision. Capitol Engineering Corp., 68-1 BCA 6833.
- 7.4 Partner's Salary. Government cannot require contractor to direct-charge 50% of partner's salary to Government contract which contains maximum overhead rate where contractor's established practice is to charge

*See also: 8.0 Indirect Costs

100% of his salary to overhead. Klein & Saks,
66-2 BCA 6067.

- 7.8 Advance Agreement in Contract. Parties can agree in CPFF contract that salaries of certain individuals will be charged direct or indirect (see 1.4). Agricultural Aviation Engr. Co., 66-1 BCA 5423.
- 7.9 Bid and Proposal Costs - Direct v. Indirect. See 12.2, 12.3, 12.4, 12.7, and 12.9.
- 7.10 Recruitment Advertising. Not allowable as direct charge since contractor's established practice to charge to overhead. Capitol Engr. Corp., 68-1 BCA 6833.
- 7.11 Patent Expense. Patent expense associated with specific contract need not be charged direct to that contract. The Boeing Co., 69-2 BCA 7980. (see 40.4).
- 7.12 Sales Commissions. Need not be charged direct to contracts involved. Cubic Corp., 1963 BCA 3775 (see 51.1).

- 7.13 "Cost Objective"; Special Facilities. The term "cost objective" need not mean a contract or group of contracts. Costs can be direct for some purposes and indirect for others. Thus, where contractor has an established practice of collecting the cost of special facilities (wind tunnels and space chambers) in a special pool, and allocating to all contracts on basis of engineering direct labor hours, the method is equitable and proper under 15-201.1 (notwithstanding the result is to charge costs to contracts not receiving benefit of the facilities). If the Government wants costs direct-charged or allocated on a usage basis, contract should so specify. McDonnell Douglas Corp., 69-2 BCA 8063. See also R.D. Mounts, Inc., 75-1 BCA 11,077.
- 7.14 Burden of Proof. Contractor has burden of proving that costs normally charged indirect should be charged direct under ASPR 15-202. Coleman Engineering Co., 65-1 BCA 4695. (see 7.18.2).
- 7.15 Travel: Direct v. Indirect.
See 60.3.

- 7.16 B&P, IR&D and Rework: Direct v. Indirect.
 See 12.2.
- 7.17 Utility Costs: Direct v. Indirect.
 See 36.5.
- 7.18 Indirect Cost Charged Direct: Adjustment of Overhead
 Pool.
- 7.18.1 Deletion from overhead pool of amount charged
 direct to Government proper. Airtech Services,
 Inc., 68-2 BCA 7290.
- 7.18.2 Burden of proof is on contractor to prove that
 cost of like items applicable to other work of
 contractor has been eliminated from overhead
 allocated to contract. Coleman Engineering Co.,
 65-1 BCA 4695 (see 7.14).
- 7.18.3 Must avoid duplicate payment. Hurd-Darbee, Inc.,
 68-2 BCA 7402 (see 21.4).
- 7.18.4 Proper to adjust overhead pool to prevent dupli-
 cation of charges. Capitol Engineering Corp.,
 68-1 BCA 6833.

7.18.5 In order to permit contractor to pull certain costs out of overhead and allocate to specific contract(s) as a direct charge, contractor must show sound basis for determining the amounts it proposes to remove from overhead. "Such a determination may not be made in a vacuum nor may it be based on speculation." Contractor has burden of establishing its claim by a preponderance of the evidence. Planetronics, Inc., 1962 BCA 3356 (citing 58-1 BCA 1686).

7.18.6 Where CPFF contract provides that certain items (laboratory facilities and travel) will be charged direct, contractor must delete "like items" from overhead. Webster-Martin Inc., 70-1 BCA 8120.

7.18.7 Contractor prohibited from charging fringe benefits of employees as direct cost since they were normal overhead costs. Kenmore Garment Co., ASBCA 14142, 71-1 BCA 8768.

7.19 Provisional Hourly Rates. Contractor cannot invoice Government under CPFF contract for provisional hourly rates where no evidence such rates reflect actual labor costs. Airtech Services, Inc., 68-2 BCA 7290.

- 7.20 Cost of Consultant Services Required for A Specific Contract. Held that consultant services required in the performance of a specific contract must be charged as a direct cost to that contract and may not be charged nor allocated as an indirect cost to the contractor's other cost contracts. Celesco Industries, Inc., ASBCA 20569, 77-1 BCA 12,445.

8.0 INDIRECT COSTS

- 8.1 Non-Competitive Overhead. Upon termination for convenience, Government cannot disallow overhead costs merely because they are "unreasonable" or "non-competitive". Stanley Aviation Corp., 68-2 BCA 7081.
- 8.2 Selection of Base. Contractor cannot use the operations of a single clinic as the base for determining a higher overhead rate where contract did not so provide and the conduct of the parties during the negotiation of a prior Supplemental Agreement indicated that the contractor's institution-wide operations was the accepted base or "cost objective." Lancaster Cleft Palate Clinic, 69-2 BCA 8051.
- 8.3 Selection of Base - Equities. Transferee under novated contract may allocate costs based on total costs rather than on direct labor (the method used by the Transferor) where Transferor's method was shown to be less equitable (notwithstanding the change in increased costs allocated to the novated contract). Zero Manufacturing Co., 70-2 BCA 8489.

- 8.4 Retroactive Change of Base. Contractor may, for purpose of negotiating the final costs of a FPI contract, select a more appropriate base for allocation of costs than was used when the contract was originally negotiated, where the new method more clearly reflects his costs, notwithstanding the new method results in higher costs under the FPI contract. Fact contractor would not have incurred a loss under the previous method does not preclude changing the base. Ibid.
- 8.5 Pre-1960 ASPR: G&A Cost Base. See Air Products, Inc., 1962 BCA 3451.
- 8.6 Basis of Calculation v. Basis of Allocation. Cannot use one base for calculation of the overhead rate and a different base for allocation of the costs. R.W. Borrowdale Co., 69-1 BCA 7564.
- 8.7 Allocation of G&A to Unallowable Costs. Where overtime premium is unallowable under a CPFF contract such cost should not bear a pro-rata share of G&A since overtime does not as a rule generate G&A expense. There is no hard and fast rule regarding the allocation of G&A to an unallowable cost. Must bear in mind the

principle under 15-203 is to cause the cost objective that generates the G&A to bear such cost. American Electronic Labs, Inc., 65-2 BCA 5020. See also: Martin Marietta Corp., ASBCA No. 14159, 71-1 BCA 8783.

- 8.8 Disallowed Overhead in Base. Under a termination for convenience, it is unfair to the contractor to insist that disallowed overhead costs remain in the base for the purpose of determining the G&A expense rate. Sundstrand Corp., 65-1 BCA 4653.
- 8.9 IR&D in Base. Government cannot require that the direct labor cost of IR&D be included in the G&A cost-of-sales base. National Research Corp., 1962 BCA 3526 (pre-1960 ASPR).
- 8.10 Generally Accepted Accounting Practice. Contractor's established practice of not allocating G&A expense to IR&D costs is a "generally accepted accounting practice." Curtiss-Wright Corp., 65-2 BCA 4960.
- 8.11 Generally Accepted Accounting Principles. If costs are limited or excluded by law, regulation, or contract, questions of "generally accepted accounting principles," "allocability," and "reasonableness" are not relevant. General Dynamics Corp., 68-2 BCA 7297.

8.12 Contractor's Established Practice.

- 8.12.1 Approval of contractor's accounting practice is not determinative in itself of reimbursability. United Technology Center, 68-2 BCA 7350; Chrysler Corp. ASBCA 14385, 17 Mar 71. (See 8.12.15 for corollary).
- 8.12.2 "There is no inflexible rule that a contractor must follow the same accounting basis, if to do so distorts the result of business operations." Coleman Engineering Co., 65-1 BCA 4965 (citing 1962 BCA 3452). See also cases cited in 5.10 and 5.11.
- 8.12.3 System used by contractor must not produce an unreasonable result in a particular situation, notwithstanding the contractor may have used that system consistently. R.W. Borrowdale Co., 69-1 BCA 7564. See also cases cited in 5.11.
- 8.12.4 Contractor may, under appropriate circumstances, continue a method of accounting for the purpose of one contract (which contains maximum overhead rates) even though contractor has adopted a new method for other contracts. Must, however, avoid

any duplicate recovery of costs. Coleman Engineering Co., Inc., 66-2 BCA 5972.

- 8.12.5 "Costs allowable under the ASPR cost principles are not necessarily allowable if not in accordance with the consistent accounting practices of the contractor." Federal Electric Corp., 67-2 BCA 6416. (see 8.12.1 for corollary rule).
- 8.12.6 Contractor must abandon a previously followed method of allocating overhead where such method gives unreasonable and distorted results. Plasmadyne Corp., 1962 BCA 3452. See also cases cited in 5.10 and 5.11.
- 8.12.7 Unusual circumstances require abnormal allocation of costs. Fred D. Wright Co., Inc., 1962 BCA 3432.
- 8.12.8 "While a contractor may at times deviate from his regular accounting practices where it is demonstrated that the usual practice causes inequitable results (citing 58-1 BCA 1789), such deviation should be sparingly permitted in recognition of the importance of consistency to sound accounting practices" (citing 58-1 BCA and 60-2 BCA 2797). American Scientific Corp., 67-2 BCA 6670.

8.12.9 Contractor's Established Practice Regarding Specific Costs (also see 10.0 thru 63.0).

8.12.9.1 Bid and Proposal, independent development, and rework may be charged to overhead, rather than as direct labor, in accordance with contractor's established practice. Borg-Warner Corp., 1964 BCA 4507 (rehearing denied 65-1 BCA 4622).

8.12.9.2 Off-site locations: see 8.14.

8.12.9.3 Termination costs may receive allocation of special overhead where contractor showed it was his practice to do so. The Boeing Co., 69-2 BCA 7795.

8.12.9.4 Bid and Proposal costs: see 12.3 and 12.4.

8.12.9.5 Direct-Charging Officers' Salaries: see 7.1 thru 7.4.

8.12.9.6 Special-Base Period: see 8.15.1.

8.12.9.7 Inspection and shipping costs, normally charged by others to overhead, may be charged instead to G&A where consistent with contractor's established practice. Missile Systems Corp. of Texas, 1964 BCA 4434.

8.12.9.8 Residual Value for Depreciation Purposes: see 24.6.

8.12.9.9 Supplemental Benefit Plan (Unemployment Benefits): see 21.5.

8.12.9.10 Utility Costs: see 36.5.

8.12.9.11 Legal Costs: see 45 and 56.1.

8.13 Changes in Contractor's Business.

8.13.1 Company retrenchment and reorganization resulting from loss of Government contracts justified combining home office and test site engineering labor burdens, notwithstanding had been separated in prior years when it appeared business volume would expand. Coleman Engr. Co., 65-1 BCA 4695.

- 8.13.2 Contractor has burden of proving that change in its system is necessary because of changed or unusual circumstances. Plasmadyne Corp., 1962 BCA 3452.
- 8.13.3 Transferee under novated FPI contract may retroactively change its method of allocating G&A costs where shown under ASPR 15-203(d)(i) that "substantial difference occurs between the cost patterns of work under the contract and other work of the contractor." (note Board applied Section XV principles even though not a part of the FPI contract). Zero Manufacturing Co., 70-2 BCA 8489.
- 8.13.4 Government may not require a retroactive change in the contractor's method of allocating costs where the result would be to shift costs to FP and commercial contracts under which contractor has no means for adjustment, where Government gave "implicit approval" through its auditors and contracting officers during forward pricing of the FP contracts during the period involved. Wolf Research and Development Corp., 69-2 BCA 8017 (reversing earlier ruling in 68-2 BCA 7222). Also see Litton Systems, Inc., 66-1 BCA 5599, reversed by Court of Claim 9 November 1970 (no. 228-66). See also cases listed in 5.10 and 5.11.

8.14 Off-Site Locations.

- 8.14.1 Where contractor maintained a separate office for performance of a NASA contract, may exclude overhead costs associated with that office from contractor's general overhead pool and exclude direct labor associated with that office from the base for allocation of general overhead only if contractor can prove it was his established practice to segregate these costs. Where not segregated on contractor's books, Government will not recognize separate costs where to do so represents a departure from contractor's established accounting practices. American Scientific Corp., 67-2 BCA 6670.
- 8.14.2 See 8.13.1.
- 8.14.3 Contractor entitled to a hearing on the merits to determine whether deferrment of recruitment expenses for remote site operation constituted a change in accounting methods requiring Government approval under its contract. Electro-Mechanical Research, Inc., 69-2 BCA 7835 (see 47.2). (Appeal subsequently denied in 70-2 BCA 8381).

8.15 Base Period,

- 8.15.1 Contractor and Government can, notwithstanding ASPR 15-203(e), agree that overhead will be computed over a base period which exceeds one year. However, where this represents a departure from the contractor's established accounting system, any such agreement must be set forth explicitly in the contract. Associated Aero Science Laboratories, Inc., 67-2 BCA 6618.
- 8.15.2 Where contractor's fiscal year ended 31 July 1965, and contract performance began in June 1965 and continued through November 1965, overhead costs for that portion performed in CFY 1965 (June to July) must use the entire CFY 1965 as base period for allocation of indirect costs (not merely the two-month period associated with contract performance. The provision permitting a shorter period where the contract performance covers a minor portion of the fiscal year is permissive, not directive. Under the circumstances, the entire fiscal year is more reliable (prevents "inequities"). American Scientific Corporation, 67-2 BCA 6670.

- 8.15.3 Where subcontractor was a new company and had high start-up costs in first 4 months and extraordinarily high overhead costs, base period should be the last 8 months of the subcontractor's fiscal year rather than the entire 12 month period, since latter would result in an inequitable distribution of costs. Itek Corporation, 1963 BCA 3967.
- 8.15.4 In the absence of substantial justification, consistency in accounting practice requires the use of the base period during which the contract was performed, rather than the preceding year (termination claim). Francis Associates Co., 70-2 BCA 8493.
- 8.16 Combined Rates: Contractor and Subsidiary. Where contractor and its subsidiary both performed Government contract, and shared same managerial and supervisory personnel, proper for contractor to combine the two for overhead and G&A expense purposes by using a single cost base and developing composite rates for the two entities (termination for convenience). Cryo-Sonics, Inc., 70-1 BCA 8313.

8.17 Indirect Costs - Overhead - Retroactive Disallowance.

Held that the ASPR 7-203.4 rule, permitting disallowance of costs, upon audit, for three years, does not apply where contractor has relied to his detriment upon the Government's previous allowance of a cost even though the previous allowance of the cost may have been in error and the particular cost an unallowable cost. Falcon Research & Development Company, ASBCA 19784, 77-1 BCA 12,312.

9.0 APPLICATION OF PRINCIPLES
AND PROCEDURES

- 9.1 Relationship of Criteria. If a cost is unallowable under the cost principles relating to specific types of costs, the questions of reasonableness and allocability are not reached; i.e., the type of cost must be found to be "not unallowable" under the cost principles before considering questions of reasonableness and allocability. Lockheed Aircraft Co., 66-2 BCA 5948.
- 9.2 Costs Excluded By Law, Regulation or Contract. If costs are limited or excluded by law, regulation, or contract, then questions of generally accepted accounting principles, allocability, and reasonableness are not relevant. General Dynamics Corp., 68-2 BCA 7297.
- 9.3 ASPR Principles v. Contractor's Practices. "Costs allowable under the ASPR cost principles are not necessarily allowable if not in accordance with the consistent accounting practices of the contractor." Federal Electric Corp., 67-2 BCA 6416. (see also 8.12.1)

9.4 Subcontractor Costs. See 40.0.

9.5 Miscellaneous.

9.5.1 Application of Section XV to FP Contract.

Equitable adjustment under FP contract does not require exclusion of interest and advertising expense, since nothing in record to indicate parties intended to be bound by ASPR Section XV (notwithstanding parties knew C.O. would be required to use the ASPR cost principles as a guide). R.W. Borrowdale Co., 69-2 BCA 7881.

9.5.2 Effect of Supplemental Agreement. Where additional work is added by S/A which incorporates new general provisions incorporating ASPR XV "in effect as of date of the contract," and the additional work is severable, then the ASPR cost principles in effect as of the date of the S/A applies to the additional work. Mauch Laboratories, Inc., 1964 BCA 4023.

9.5.3 DPC No. 69. Applicable to cost-type contracts entered into prior to issuance of the DPC but not retroactively applicable to FP contracts. Switlik Parachute Co., Inc., 71-1 BCA 8769.

- 9.5.4 Provisional Rates. Board rejected contractor's argument that payments under Negotiated Overhead Rates clause are fixed, rather than provisional. Bowen-McLaughlin-York, Inc., 69-2 BCA 7964. (see also 5.5 and 7.19).
- 9.5.5 Effect of Limitation of Cost (LOC) and Limitation of Government's Obligation (LOGO) Clauses. LOC and LOGO clauses prevail over negotiated overhead rates. 68-2 BCA 7328; 69-1 BCA 7708;* 69-2 BCA 7858; 68-1 BCA 6951; 69-2 BCA 7863; 66-1 BCA 5576; 68-2 BCA 7156. Prior approval of contractor's accounting system is irrelevant; Government may, at its option, fund the overrun. 68-2 BCA 7328.
- 9.5.6 Effect of Novation Agreement. Change in allocation method: see 8.3; Depreciation: see 24.2; IR&D and G&A: see 49.7.
- 9.5.7 Cost-Plus-Percentage-of-Cost. Employee Bonuses: see 17.1 Subcontracts: see 36.4.

*Reversed by Ct. Cls. 16 Apr 71 (No. 503-69). Contractor does not bear risk of overrun if he has no reason to expect same.

9.5.8 Burden of Proof.

9.5.8.1 Overhead Claim. Burden is upon contractor to establish its claim by a preponderance of the evidence. Claim against the Government need not be allowed merely because it has been alleged. Contractor must prove its alleged cost with reasonable certainty. Sufficient if contractor proves a reasonable basis for its computation even though the result is only approximate. Plane-tronics, Inc., 1962 BCA 3356 (citing 273 U.S. 359, et al).

9.5.8.2 Charging Indirect Costs Direct. See 7.18.2 and 7.18.5.

9.5.8.3 Change in Contractor's Business. See 8.13.

9.5.9 Fixed Overhead Rates. Cost-type contracts which provide for overhead payments based on a fixed percentage rate of some element of direct cost, but do not provide for retroactive adjustment to actual costs, are illegal. (Only contracts with

educational institutions under 41 U.S.C. 254a may use predetermined overhead rates). 35 Comp. Gen. 434.

- 9.5.10 Maximum Overhead Rates. Parties may agree in CPFF contract that overhead and G&A will not be reimbursable in excess of specified percentages of direct costs. Agricultural Aviation Engr. Co., 66-1 BCA 5423. See also 69-2 BCA 7835; 66-2 BCA 5972; 70-2 BCA 8487 (re effective date of modification revising ceiling rate).
- 9.5.11 Recreation Facility. Cost of construction unallowable where costs were to be borne partly by contractor and partly by Government non-appropriated funds. Pittsburgh Institute of Aeronautics, 1964 BCA 4018.
- 9.5.12 Retroactive Accruals. If events in later years have a legitimate effect upon the costs of a previous year, no reason why the cost effect of such later events should not be taken into consideration in the year for which overhead costs are still being negotiated, unless:
- (1) final payment has been made;

- (2) nature of the cost is such that its treatment should not be affected by hindsight;
- (3) such adjustments produce an inequity to the other party; or
- (4) violates the parties intent as expressed in the contract.

Assuming (1)-(4) are not present, retroactive adjustment to include accrual for later is proper. Fairchild Hiller Corp., 69-1 BCA 7657. See 24.8 (Depreciation); 53.2 (Severance Pay); 55.1 (Taxes).

9.5.13 Overhead Burden and Division G&A on Termination Settlement Expenses. Contractor held entitled to recover his overhead burden on termination settlement expenses because nothing in the Termination clause or ASPR limited recovery to direct costs. He was also entitled to recover division general overhead and administrative expenses incurred during settlement because such costs bore an equitable relationship to the Government as a class of customer and were reasonable. Thiokol Chemical Corp., ASBCA 17544, 76-1 BCA 11,731.

10.0 ADVERTISING

- 10.1 Prototype. Prototype or experimental airplane, if considered media for selling, would be excluded as unallowable advertising. General Dynamics Corp., 68-2 BCA 7297 (see 12.6).
- 10.2 Promotional. Public relations expenses which are promotional rather than technical liaison or service to customers are unallowable (good examples of allowable PR expenses). Cook Electric Co., 66-2 BCA 6039.
- 10.3 Recruiting. Recruitment advertising allowable as indirect but not direct cost, per contractor's usual practice. Capitol Engineering Corp., 68-1 BCA 6833.
- 10.4 Fixed Price Contracts. Retrospective pricing of FP contract change need not exclude advertising (or interest) since Sec. XV only a guide. R.W. Borrowdale Co., 69-2 BCA 7881.
- 10.5 Promotional. Payment as salary to deceased stockholder's son in order to retain father's name as being "associated" with company is unallowable promotional expense. Capitol Engr. Corp., 68-1 BCA 6833.

10.6 Promotional Publication and Distribution of Magazine,
Preparation and Release of Photographs and News Stories,
Production and Showing of Motion Pictures on TV Stations.

Contractor's costs incurred in publishing and distributing magazine to persons other than its employees, costs incurred in taking pictures, preparing and making press releases in the U.S.A., costs incurred in foreign countries in making foreign press releases and costs incurred in producing and showing a motion picture on three television stations all held not to be advertising cost but reimbursable as ordinary business costs since they were not made unallowable by any provision of the contract, by law or by ASPR XV, were allocable to all of contractor's business as a necessary cost of doing business and were reasonable in amount. The Boeing Company, ASBCA 14370, 73-2 BCA 10,325. To the same effect was Aerojet General Corp., ASBCA 13372, 73-2, 73-2 BCA 10,164.

10.7 Transporting and Exhibiting Contracts Model Aircraft
Display. Costs incurred by contractor in fabricating, transporting and exhibiting in various cities a display of models of aircraft designed and fabricated by it were unallowable as advertising costs as were his costs incurred in the unveiling of the model of a supersonic

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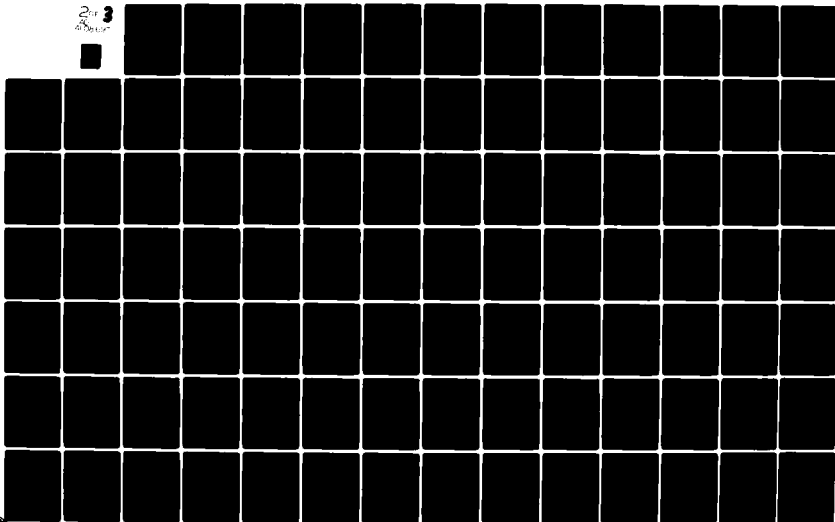
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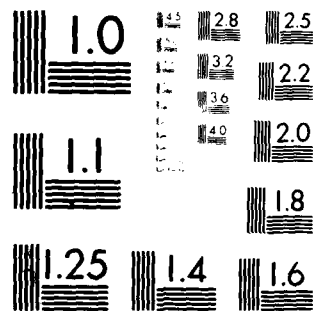
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transport aircraft, and displaying an exhibit at and participating in the national conventions of certain associations which were neither business, technical, or professional organizations. The Boeing Company, supra. (10.6).

11.0 BAD DEBTS

- 11.1 Collection Expenses. Attorney's collection fees are not "bad debts" and are allowable. American Electronic Labs, Inc., 65-2 BCA 5020.
- 11.2 Advances. Advances paid by prime to agency for which services have not been furnished and refund cannot be obtained constitute bad debts and are not allowable. No. Kansas Telephone Co., et al, 65-1 BCA 4735.
- 11.3 Bad Debts. Unallowable. Webster-Martin, Inc., 70-1 BCA 8120.

12.0 BIDDING AND PROPOSAL COSTS

- 12.1 G&A v. Overhead. IR&D and B&P must be included in contractor's G&A expense, not overhead, for pro rata allocation to all business, notwithstanding all such costs were incurred by engineering department. Stanley Aviation Corp., 68-2 BCA 7081.
- 12.2 Overhead v. Direct. Contractor may charge B&P, ID, and rework to overhead, rather than direct to contract, per established accounting practice (under both pre- and post-1960 ASPR). Borg Warner Corp., 1964 BCA 4507 (rehearing denied 65-1 BCA 4622).
- 12.3 Overhead v. Direct. Cost of preparing proposal required by contract may be charged to overhead, and thus not subject to contract's "cost ceiling," since this procedure previously used by contractor and impliedly accepted by Government in contract negotiation. Singer-General Precision Inc., v. U.S., Court of Claims, CCH para 83,695 (reversing 67-2 BCA 6718).
- 12.4 Overhead v. Direct. Simultaneous performance of CD (Contract Definition) contract does not preclude contractor from charging B&P expense for proposal for

subsequent phase to overhead, notwithstanding CD contract work statement was broad enough to include effort charged to overhead, since 15-205.3 requires bidding cost be charged indirect unless some other established practice has been shown and approved. North American Rockwell Corp., 69-2 BCA 7812. ("Sprint" case).

- 12.5 Includes Development. Under ASPR 15-205.3 B&P may include design and development costs - need not be charged to IR&D. Ibid.
- 12.6 Prototype Airplane. Prototype or experimental airplane, built in secret, not necessary (even though desirable) to support a proposal, is independent development - not B&P. Building of hardware is not B&P, but even if considered such, would be unreasonable in amount. (See 10.1 re: Selling cost). General Dynamics Corp., 68-2 BCA 7297; General Dynamics Corp. v. U.S., 18 CCF 82, 332 (Ct Cl 1973).
- 12.7 Direct v. Indirect; Breadboard. Breadboards and mockups properly charged to B&P and includable in overhead, notwithstanding contractor simultaneously performing design study contract, since contract did not require

such effort. (See 51.3 re: Selling costs). General Dynamics Corp., 65-2 BCA 5067.

- 12.8 Demonstration Units. Low Altitude Land Observation (LALO) units, developed and constructed at cost of \$200K, even though not full fledged "prototypes," are more than "breadboards" and must be charged to IR&D, not B&P. Even though a movie film of units was used to support an unsolicited proposal, and two R&D contracts for \$1.15M were eventually obtained, there is an "unsurmountable question of reasonableness" as B&P. (See 51.4 re: Selling costs). General Dynamics Corp., 70-1 BCA 8143.
- 12.9 Miscellaneous Costs. Travel costs, samples, drawings, and testing costs, voluntarily incurred prior to receipt of contract, properly charged to overhead as bidding or selling expenses, and are not direct costs for purpose of redetermining the price of the FPR contract. Channell Splicing Machine Co., 66-2 BCA 6061.
- 12.10 Aircraft Mock-Up. Contractor held entitled to recover through overhead, as bid and proposal costs, costs of constructing, updating, and preparing a competitive analysis of the performance characteristics of an

aircraft mock-up built and displayed in support of his competitive proposal for an engineering development contract for an anti-submarine warfare aircraft. General Dynamics Corp., ASBCA 15394 and 15868, 72-2 BCA 9533.

- 12.11 B&P Costs Incurred to Get Commercial Business. Held to be allocable to and reimbursable under contractor's Government cost type contracts. See General Dynamics Corp., Electric Boat Division, supra (5.19).
- 12.12 Changed Method of Accounting Retroactively Applied. Contractor under cost reimbursement contract held not entitled to reimbursement for bid and proposal costs according to a changed method of accounting retroactively applied because there was no unusual circumstances in contractor's operations which did not become apparent until the time proximate to the requested change. International Business Machines Corp., 77-1 BCA 12,293.
- 12.13 Application of ASPR B&P Allowability Formula at Division Level. Held that contractor's action in applying the B&P allowability limitation formula set out in ASPR 15-205.3 at the divisional level of his

organization instead of applying it at the corporate level where the costs were collected was not a cost accounting practice as that term is used in CAS Board regulations because the ASPR allowability limitation formula is not a method or technique for measuring or assigning costs. Also held that his application of the ASPR formula to his B&P costs at divisional level after the costs had first been collected at the division and level then placed in a pool at corporate level from which they were allocated by to each of contractor's divisions was proper and did not constitute a change in accounting practice since this was the first time the ASPR formula had been used by him. Contractor had previously allocated his B&P costs through his headquarters G&A in accordance with the option provided in ASPR 15-205.3(c) and had not been required to apply the ASPR allowability limitation formula set out in ASPR 15-205.3(d)(2)(B) at the same point in his accounting system because the first of these provisions dealt with allocability while the second dealt with allowability. However, his increase in B&P activity in his manufacturing division in 1975 had caused the ASPR formula limiting allowability of B&P costs to become applicable. Contractor collected P&P costs and allocated them through his overhead pool back to

each of his divisions in 1975 just as he had previously done and then applied the ASPR formula limiting allowability to the divisions instead of either applying the formula initially at division level or at corporate level as the Government contended he was required to do. Board held that he was not required to apply it as contended by the Government but could apply it exactly as he had done because ASPR 15-205.3(d)(2)(B) provided that the limitation formula could be applied either on a company-wide basis (corporate or headquarters level) or by profit centers (divisions) and there is no language in the regulation suggesting that the contractor's method of allocating B&P costs was intended to control in any way the point at which he is to apply the ASPR formula for allowability of his B&P costs. Dayton T. Brown, Inc., ASBCA 22810, 78-2 BCA 13,484.

13.0 BONDING COSTS

- 13.1 Bond Required by Contracting Officer. Contractor held entitled to reimbursement under CPFF contract for costs incurred in providing a bond required by the contracting officer. United States v. Mason and Hanger Co., 260 U.S. 323; 2 Comp. Gen.470.
- 13.2 Payroll Insurance Bond. Extra charges assessed against contractor by bonding and insurance companies because extension of performance period caused by Government delays are reimbursable as an element of contractor's claim for increased performance costs. Continental Illinois National Bank v. U.S., 126 Ct. Cl. 631, Stillwell, Inc., ASBCA 9423, 64 BCA 4128. Also see, American Bridge Co. v. U.S., 72 Ct. Cl. 344; Standard Steel Car Co. v. U.S., 67 Ct. Cl. 445; Schwartz & Co. v. U.S., 89 Ct. Cl. 82; Leavitt v. U.S., 60 Ct. Cl. 952; Miller, Inc., v. U.S., 111 Ct. Cl. 252; Blair, Inc., ASBCA 8496, 63 BCA 3862; Shipping & Coal Co., ASBCA 13999, 70-2 BCA 8359.
- 13.3 No Evidence of Reasonableness of Amount. Where there was no evidence showing that the amount claimed as contractor's cost of a performance bond was reasonable,

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the cost was not allowed. Cryo-Sonics, Inc.,
ASBCA 13219, 70-1 BCA 8313.

13.4 Increase in Bond Premium Payments Due to Change Order.

A contractor's increased bond premium resulting from overtime and required by a change order were allowable and reimbursable. Stillwell, Inc., ASBCA 9423, 64 BCA 4128. See also Fischback & Moore International Corp., ASBCA 18146, 77-1 BCA 12,300.

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14.0 CIVIL DEFENSE COSTS

(RESERVED)

15.0 PERSONAL SERVICES - GENERAL

- 15.1 Improvement of Working Conditions. Voluntary contribution of \$50K to induce state to construct highway overpass is allowable as improvement of working conditions per (old) ASPR 15-204(g), since latter includes conservation of employees' working time. Benefit to Government contracts need not be susceptible of precise mathematical measurement. General Dynamics/Astronautics, 1962 BCA 3391.
- 15.2 IRS; Layoff Benefits. Book accruals for extended lay-off benefits in excess of actual payments not allowable, since exceed amounts recognized by IRS and are therefore unallowable per 15-205.6(a). General Dynamics Corp., 1964 BCA 4270.
- 15.3 Extraordinary Payments. Payments to stockholders widow and to his son are not allowable in overhead since not per contractor's established policy. Capitol Engineering Corp., 68-1 BCA 6833.
- 15.4 Concurrent Tax Deductibility. Requirement in 15-205.6(a) regarding allowability under the Internal Revenue Code extends to all of 15-205.6. Thus, contractor's

accruals under its employee life insurance program, in excess of actual premium payments, are not allowable. Fact the accruals are based on actuarial determinations is irrelevant, as is fact that accruals may later be deductible when payments are actually made. Allowability under 15-205.6 requires concurrent deductibility for tax purposes. Prior approval of the contractor's accounting practice is not, per se, determinative of allowability (citing 68-2 BCA 7350). Chrysler Corporation, ASBCA 14385, 17 March 1971.

- 15.5 Contingent Personal Services Costs. Contingent personal services costs included in termination claim were not allowable due to being contingent upon recovery from the Government on the contractor's claim. Trustee in Bankruptcy for Argus Industries, ASBCA 12829, 71-2 BCA 9015.

16.0 PERSONAL SERVICES - SALARIES & WAGES

- 16.1 Direct v. Indirect. Parties can agree in CPFF contract that certain individuals will be charged direct or indirect - simple limitation upon usual rules of reimbursability. Agricultural Aviation Engr. Co., 66-1 BCA 5423.
- 16.2 President - Benefit to Contract. Government not entitled to allow only 50% of President's salary on the basis his activities did not benefit Government contracts. Entire salary should be charged to overhead and allocated to all business. Vare Industries, Inc., 68-2 BCA 7120.
- 16.3 Partner. Where contract established maximum overhead rate and contractor's established practice was to charge partner's time 100% to overhead, Government cannot require that 50% of partner's time be charged direct to contract. Klein & Saks, 66-2 BCA 6067.
- 16.4 President. President's salary may be charged direct to CPFF contract pursuant to specific contract provision. Capitol Engr. Corp., 68-1 BCA 6833.

- 16.5 President. In absence of convincing evidence that President of company devoted efforts specifically to contract rather than management of business in general, is improper to charge portion of his salary as direct charge to contract. Airtech Services, Inc., 68-2 BCA 7290.
- 16.6 Provisional v. Actual Rates. Cannot invoice Government under CPFF contract for provisional hourly rates where no evidence such rates reflect actual labor costs. Ibid.
- 16.7 Officers. Salaries of officers cannot be disallowed absent proof either unreasonable or no services received. Navgas, Inc., 65-1 BCA 4533. However, see Lulejian and Associates, Inc., ASBCA 20094, 76-1 BCA 11,880.
- 16.8 Construction Contracts. "Minor or incidental services under 15-402.3; see Raymond International & Knudsen of Asia, 65-1 BCA 4843.
- 16.9 Salaries While Attending School. Under pre-1 July '60 ASPR proper to include salaries of employees in overhead for period employees attending post-graduate courses during working hours, where courses related

to Government R&D. Western Electric Co., Inc.,
69-1 BCA 7660.

- 16.10 Key Employees. Board interprets CPFF contract provision prohibiting salary increases for "key employees". Consolidated Shipbuilding Corp., 56-2 BCA 1063.
- 16.11 Constructive Salaries. CPFF contractor not entitled to recover in overhead sums claimed therein as "constructive salaries" for contractor and his wife where proof showed that no salaries had in fact been paid to them. Norman M. Giller & Associates. ASBCA 14696, 73-1 BCA 10,016.
- 16.12 Salaries of Personnel Preparing Termination Claim.
Held to be unallowable as direct charge or cost to terminated contract because their salaries had been recorded in and allocated to contractor's general and administrative expense pool and charged on a prorated basis to his ongoing business and there was basis for finding that they had not been recovered. Bermite Division of Tasker Industries, ASBCA 18280, 77-1 BCA 12,349.

16.13 Pilot as Key Employee. Contractor held entitled to an amount equal to two weeks salary as severance pay for a pilot employed under a contract terminated for the convenience of the Government because he did not have a binding contract of employment with the pilot obligating him to pay any more than that amount. Therefore, although he was entitled to the pilot's salary or severance pay for two weeks as a continuing cost of the termination, he was not entitled to recover any amount paid to the pilot as continuing wages after expiration of that two weeks period. Globe Air, Inc., 78-1 BCA 13,079.

16.14 Lack of Funding. Held that salaries for members of the executive council of a corporation operating under a CPFF contract were not allowable costs where the contract provided for no reimbursement unless funding for the physical year in question had been provided and the corporation had not received any funding for the contract in the year in which the salaries were paid and was, therefore, not obligated to pay the salaries. Furthermore, the salaries were unreasonable and had not been approved by the Government. Mountain Plains Education And Economics Development Program, Inc., ASBCA 21714, 78-1 BCA 13,083.

- 16.15 Partner of Subcontractor. Held contractor was entitled to reimbursement for personal services rendered by the partner of a subcontractor, despite the lack of time sheets to show the number of hours he worked, because testimony showed that all the hours billed had been worked, described the method used to record them, and stated that the original records had been discarded after monthly requisitions had been submitted to the Government reflecting their contents. The Housing Authority of the City of New Haven, 78-2 BCA 13,237.
- 16.16 Officer, Reasonableness v. Unreasonableness. Held that the Government's allowance of a salary of \$52,000.00 for the president and principal owner of contractor corporation in computing G&A costs instead of the \$87,000.00 being claimed was "generous under the circumstances" since the contractor corporation had experienced a "bad" business year and in fact had not paid any salaries that year. W.S. Meadows Engineering, Inc., ASBCA 22532, 78-2 BCA 13,514.

17.0 BONUSES AND INCENTIVE COMPENSATION

- 17.1 Bonus - CPPC. Payment of bonus to employee based upon percentage of costs violates restriction against CPPC contracts. Air Repair G.M.B.H., 67-1 BCA 6115.
- 17.2 Special Bonus. A CPIF contractos is entitled to be reimbursed for cost of bonuses paid to ensure the retention of launch crews required to perform certain contracts, where the contractor had reasonable grounds for believing such bonuses were necessary and that significant losses would result if personnel were lost. Martin Marietta Corp., 69-1 BCA 7506.
- 17.3 Agreement. The requirement in ASPR 15-205.6(c) that bonus plans be entered into "before the services are rendered" means before the employees' services are rendered - not the contract services - and need not be a plan in effect before the contract with the Government was entered into. Ibid.
- 17.4 Incentive Compensation: Key Employees v. Others. An incentive compensation plan for key employees need not be based on "production, cost, reduction, or

efficient performance". These qualifying words in ASPR 15-205.6(c) apply only to the fifth category of costs identified therein, and not to incentive compensation paid to key management personnel, who normally are charged to overhead. Bell Aerospace Corp., 65-1 BCA 4865.

17.5 Reasonable - Agreement. Case bonuses to officers are not allowable unless the contractor shows that such bonuses are (i) reasonable and (ii) are paid pursuant to an agreement entered into prior to performance of the services for which the bonus is paid. Webster-Martin, Inc., 70-1 BCA 8120.

17.6 Agreement Need Not Exist When Contract Entered Into. Contractor's costs incurred in giving a jeep to a supervisory employee as an incentive to remain in contractor's employ was reimbursable, even though agreement to provide the jeep was entered into subsequent to execution of the contract. Franklin W. Peters & Associates, IBCA No. 762-1-69, 71-1 BCA 8615.

17.7 Field Adjustment Pay. Contractor held entitled to reimbursement for field adjustment pay given employees under a plan established to insure their continued

presence on the job during the Apollo program and cost was not unreasonable under the circumstances when all factors were considered. Grumman Aerospace Corp., NASA BCA Nos. 673-8 et al, 76-1 BCA 11,671.

- 17.8 Incentive Pay. Contractor held entitled to reimbursement under its cost contract for incentive payment in the form of cash and other incentive bonuses. Celesco Industries, Inc., ASBCA 20569, 74-1 BCA 12,445.

Other Leading Cases Involving Compensation for Personal Services (Bonuses and Incentives) include: U.S. Steel Corp. v. U.S., 177 Ct. Cl. 25; Martin-Marietta Corp., ASBCA 12143, 69-1 BCA 7506; Western Electric Co., ASBCA 11050, 68-2 BCA 7275; Bath Iron Works Corp., ASBCA 12382, 68-1 BCA 7050; Air Repair G.M.B.H., ASBCA 10288, 67-1 BCA 6115; Cook Electric Co., ASBCA 11100, 66-2 BCA 6039; Raymond-Morrison Knudsen, ASBCA 10511, 65-1 BCA 4811; Bell Helicopter Co., ASBCA 9625 et al, 65-1 BCA 4865; Republic Aviation Corp., ASBCA 9868, 65-2 BCA 4989; Chrysler Corp., ASBCA 14385, 71-1 BCA 8779.

18.0 BONUSES AND INCENTIVE COMPENSATION
PAID FOR IN STOCK

- 18.1 Employees Stock Plan. See Air Products., Inc., 1962
BCA 3451 for decision under 1956 ASPR cost principles.
- 18.2 Basis of Stock. Stock bonuses are allowable, based on
the fair market value of the stock, as claimed by
the contractor, rather than the "book value" (residue
of assets over liabilities), as claimed by the
Government. Stanley Aviation Corp., 59-2 BCA 2468.
Lulejian and Associates, Inc., ASBCA 20094, 76-1
BCA 11,880.

19.0 STOCK OPTIONS

- 19.1 Difference Between Market Price of A Share of Stock and the Price Paid for Share by Employees. Contractor held not entitled to reimbursement as a part of his G&A costs the difference between the market price for a share of its stock and the price paid by its employees for a share under a payroll deduction employee stock option plan because the plan in effect granted a series of stock options, the cost of which is made unreasonable by ASPR 15-205.6(e). The Singer Company, Kearfott Division, ASBCA 18857 75-1 BCA 11,185.

20.0 DEFERRED COMPENSATION

20.1 Consultant Fee as Deferred Compensation. \$25,000

consultant fee paid annually to retired President under arrangement whereby he made himself available for consultation is allowable, since constitutes reasonable method of providing pension (notwithstanding amount paid exceeds amount that would have been paid pursuant to a pension plan adopted after execution of the President's consultant contract but before his retirement, since \$25,000 is a reasonable amount). Cook Electric Co., 66-2 BCA 6039.

20.2 Past v. Future Services. Payments by contractor in

1960 into fund to amortize the unfunded actuarial reserve requirement under the funding program then in effect held to be proper. Government's argument that cost of pension plan is incurred during the period worked and that Contractor must fund pensions ratably over the period of the employees' service rejected by the Board. Proper accounting only requires a reasonable program, actuarially sound, for getting ultimate pension costs. Western Electric Co., Inc., 68-2 BCA 7275.

- 20.3 Insurance Program - Tax Deductibility. See 15.4.
- 20.4 Obligation to Pay. To qualify as deferred compensation, contractor must be under an obligation to pay the amounts in question to his employee at some future determinable time, based on either a written agreement or an established plan, and must be so treated on contractor's books. A mere wish - limited by unavoidable funds - is not adequate to establish an allowable current cost under a Government CPFF contract. Kinn Electronics Corp., 70-1 BCA 8176. (see also 21.2). See also Hayes International Corp., 75-1 BCA 11,076.
- 20.5 Accruals for Life Insurance. Accruals of six years of premiums on life insurance for employees was not allowable as deferred compensation under ASPR 15-205.6(f) for this section provides such accruals are allowable only to extent allowed by Internal Revenue Code and IRS as business deductions and here such accruals had never been allowed by IRS as business deductions. Chrysler Corp., ASBCA 14385, 71-1 BCA 8779.
- 20.6 Accrued Leave. Costs attributed to contractor's special leave policy which were allocated as overhead costs under CPFF contracts held to have been properly

disallowed because such costs were not deductible for income tax purposes or business expense as required by applicable regulations for them to be allowable since they were not firmly vested obligations of the contractor but contingent upon the continuing survival of the employees affected. Potomac Scheduling Co., 78-1 BCA 12,887.

NOTE: No contract appeals board decisions have yet been rendered interpreting the significant changes to this section of the DAR on deferred compensation made in 1977 and in September of 1978.

21.0 FRINGE BENEFITS

- 21.1 Holiday Pay. Where T&M contract provided that contractor was not required to work on Government holidays, contracting officer's letter to contractor stating Government would pay holiday rate for such work was without effect and lacked consideration as an amendment to the contract. TEC Productions, Inc., 66-1 BCA 5684.
- 21.2 Legal Obligation. ASPR 15-205.6(g) permits allowance of only those benefits contractor is legally obligated to pay. Raymond-Morrison-Knudsen (JV), 65-1 BCA 4811 (motion for reconsideration denied 65-1 BCA 4861) (see also 20.4).
- 21.3 Holiday Pay - Established Policy. Where July 4th fell on Tuesday and contractor decided to grant July 3rd as additional paid holiday due to expected large absenteeism, July 3rd salaries not allowable since contractor's established policy did not include this day; rather, the action taken constituted an exception to such policy (distinguishing 61-2 BCA 3225). Republic Aviation Corp., 65-2 BCA 4989.

- 21.4 Direct v. Indirect. Contractor cannot charge cost of labor fringe benefits to overhead, since his negotiated overhead rate includes such costs and would result in duplicate payment. Contractor can charge such costs direct only if not a duplication and is pursuant to a generally accepted accounting method consistently applied by the contractor. Hurd-Darbee, Inc., 68-2 BCA 7402. See also Kenmore Garment Co., ASBCA 14142, 71-1 BCA 8768.
- 21.5 Change in Allocation. Where contractor had an established method of allocating Supplemental Benefit Plan contributions to 16 plants as an item of overhead on the basis of direct labor hours worked, contractor cannot change allocation to reflect benefits actually paid at one plant which had been closed. Reynolds Metals Co., 1964 BCA 4312 (rehearing denied 1964 BCA 4477).
- 21.6 Price Adjustments. Where contract authorizes price adjustment for escalation of labor costs, contractor is entitled to include increases in overhead associated with those changes in the request for adjustment. Bath Iron Works Corp., 68-1 BCA 7050.

- 21.7 Life Insurance - IRS Deductibility. See 15.4.
- 21.8 Employee Life Insurance. Allowable only to the extent
 the contractor shows is "additional compensation".
 Webster-Martin, Inc., 70-1 BCA 8120. See also
 Lulejian and Associates, Inc. 76-1 BCA 11,880.
- 21.9 Severance Pay. (ASPR 15-205.6(h) and 15-205.39) See
 53 of this publication.
- 21.10 Training and Education Expenses. (ASPR 15-205.6(i) and
 15-205.44). See 58 of this publication.
- 21.11 Losses on Sales of Employees Homes. See 39.3.
- 21.12 Insurance and Unemployment Benefits Paid Inactive
Employees. Costs of insurance and unemployment benefits
 paid to contractor's inactive employees who had been
 laid off prior to inception of the contract held to
 be reimbursable because such payments had been made
 pursuant to an established contractor employee benefit
 policy which was a necessary and ordinary part of
 contractor's business. Detroit Diesel Allison
 Division, General Motors Corp., ASBCA 20209, 76-2 BCA
 11,981.

- 21.13 Employee Unemployment Fringe Benefits. Contractor held entitled to reimbursement of employee unemployment fringe benefits costs as part of convenience termination settlement. Detroit Diesel Allison Division, General Motors Corp., ASBCA 20199, 77-1 BCA 12,414.
- 21.14 Accrued Leave Costs. Costs attributable to a contractor's special accrued leave policy which were allocated as overhead costs under CPFF contracts for statistical and analytical services, held to have been properly disallowed because the accrued leave costs were not deductible for income tax purposes as required for their allowability under Government contracts for they were not a firm fixed obligation of the contractor but were contingent upon the individual employees continuing to survive and use to such accrued leave. Potomac Scheduling Company, 78-1 BCA 12,887.
- 21.15 Health, Accident and Dental Insurance. Contractor held entitled to be reimbursed for costs of health, accident and dental insurance furnished to its employees as a fringe benefit. W.F. Sigler & Associates, 78-1 BCA 13,011, aff'd on recon 78-1 BCA 13,137. Also held that contractor's costs associated with life insurance premiums and annual,

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sick and funeral leaves granted employees in accordance with his written leave policy were allowable.

22.0 CONTINGENT COSTS

22.1 Book Accruals for Potential Employee Extended Lay-Off Benefits. Contractor's book accruals for potential liability for employee extended lay-off benefits which were only accruals and not paid over to a trustee were not incurred costs but accruals for potential future liability and as such were unallowable. General Dynamics Corp., ASBCA 8867, 1964 BCA 4270. However, had contractor paid funds over to trustee for future payment to employees or paid them over directly to his employees, reimbursement would have been permitted. Reynolds Metals Co., ASBCA 7686 1964 BCA 4312.

22.2 Subcontractor Potential Increased Contributions to State Unemployment Fund. Subcontractor's potential future increased contributions to the state unemployment funds were not cost incurred under its subcontract but a possible future liability. Therefore, such future increased contributions were unallowable under prime contract. A.C.F. Brill Motors Co., ASBCA 2470, 57-1 BCA 1178. Another case holding contingency costs in subcontractor billings to be unreimbursable and prohibited by this section of ASPR XV is Grunman Aerospace Corp., ASBCA 11725, 71-1 BCA 8881.

- 22.3 Included in Termination Claim. Contingent personal services costs (contingent upon recovery from the Government) included in contractor's termination for convenience claim held unallowable. Trustee In Bankruptcy for Argus Industries, ASBCA 12829, 71-2 BCA 9015.
- 22.4 Book Accruals for Employee Life Insurance Premiums.
Contractor's book accruals of 6 years of premium costs for life insurance for its employees held unallowable as deferred compensation for such costs were contingency costs since they were predicated on possible future liability. Chrysler Corp., ASBCA 14385, 77-1 BCA 8779.
- 22.5 Legal Fee Contingent on Successful Litigation Converting Default Termination to a Convenience Termination. Held that a legal fee contingent upon successfully converting a default termination to a convenience termination through litigation ceases to be a contingent cost once the litigation has been successful and becomes a firm fixed cost to the contractor and as such is allowable as part of his termination claim subsequently submitted against the Government. Southland Mfg. Corp., ASBCA 16830, 75-1 BCA 10,994.

- 22.6 Book Accruals for Employee Leave Costs. Held that contractor's book accruals of employee leave costs were unallowable since they created no binding obligation on contractor and vested no legal right in employees and depended upon the contingency of the employees continuing to live and work as employees of the contractor. Potomac Scheduling Co., 78-1 BCA 12,887.
- 22.7 Employee Group Life Insurance Plan. Disallowance of portions of a contractor's premium costs allocated to his group life insurance plan's retiree reserve fund held improper because the Government had previously approved the plan's costs and benefits and either knew or had the means of knowing about the extent of the reserve fund. Portions of life insurance premiums not used for expenses of the insurance plan were used to maintain coverage for existing pensioners if the plan was terminated. After having approved the plan, the Government took the position that the fund for the plan had accumulated over twice the amount needed for its stated purpose and disallowed the portions of premiums allocated to the reserve fund. Thus, it was estopped from doing, the Board held. Western Electric Co., Inc., ASBCA 21294, 79-1 BCA 13,550.

23.0 CONTRIBUTIONS AND DONATIONS

- 23.1 Allowability v. Reasonableness and Allocability.
See para 3.2.
- 23.2 Political Contributions. Political contributions are unallowable under a long standing governmental policy and practice of which the ASPR and FPR are reflective. Capitol Engr. Corp., 68-1 BCA 6833.
- 23.3 Lobbying. Use of appropriated funds directly or indirectly for lobbying prohibited by 18 U.S.C. 1913.
- 23.4 Voluntary Payment to State. Contractor's voluntary payment to State of California to expedite highway construction work in order to permit contractor to perform Government contract more efficiently is not an unallowable contribution or donation under (old) ASPR 15-205(f). General Dynamics/Astronautics, 1962 BCA 3391 (see 15.1).
- 23.5 Voluntary Payment in Lieu of Taxes. Contractor's voluntary payment to city in lieu of taxes not allowable, notwithstanding was not a contribution

in a charitable sense (Government had previously owned plant and made payments to the city in lieu of taxes, then turned property over to contractor who was not required to pay taxes for one year since was not record owner on the assessment date). Payment made to ensure good relations with city is unallowable per ASPR 15-205.8. The Boeing Co., 69-2 BCA 7980.

- 23.6 Grant to Hospital Use Planning Group. Contractor's grant to Hospital Use Planning Group (a research organization) which it was not obligated to pay held by Court of Claims in reversing ASBCA (Blue Cross Assn., ASBCA 15430, 71-1 BCA 8852) to not be a donation but an ordinary cost of doing business and reimbursable under cost-type contract. Blue Cross Association v. U.S., 200 Ct. Cl. 716 (1973).

- 23.7 Greater Seattle International Trade Fair, City Historical Museum, City Banquet. Contractor's costs incurred in printing and mailing invitations to guests and providing them with aircraft and motor vehicle transportation at request of City of Seattle to attend banquet given by it, costs incurred in providing new draperies, carpet, and refurbishing

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of the City's historical museum which housed among its exhibits contractor's model aircraft exhibit, and costs incurred in assisting the City of Seattle in sending delegates to a trade fair in Japan were held not to be contributions or donations but public relations costs necessary for contractor's business operations as whole and reimbursable as allowable costs in its overhead. The Boeing Company, ASBCA 14370, 73-2 BCA 10,325.

24.0 DEPRECIATION

- 24.1 Capitalization v. Current Expense. Interior painting allowable as current expense, but new lighting system must be capitalized and depreciated. The Boeing Co., 71-1 BCA 8619.
- 24.2 Effect of Novation. Novation agreement precludes increased depreciation associated with a reevaluation of assets upon sale to the transferee. Sundstrand Corp., 65-1 BCA 4653. Also, contractor cannot "offset" increased depreciation with "savings" in other areas, since the novation is not based upon a "total cost" approach. LTV Aerospace Corp., 67-2 BCA 6406 (aff'd by Court of Claims, 192 Ct. Cl. 191).
- 24.3 Disallowed Costs in Base. Where excess depreciation has been disallowed in overhead (per 24.2 above), such disallowed portion should be removed from the base for purpose of determining G&A rate. Sundstrand Corp., 65-1 BCA 4653.*
- 24.4 Extraordinary Obsolescence. Where facility was constructed primarily for performance of a contract which has been terminated for convenience, and the

*Affirmed by Court of Claims in Sundstrand Turbo v. U.S., 182 Ct. Cl. 31.

facility has no economic use after termination, contractor is entitled to recover in the termination settlement the facility depreciation costs through the date the contract would have expired had there been no termination. Lowell O. West Lumber Sales, 67-1 BCA 6101.

24.5 Useful Life - IRS Acceptance. Where useful lives used to determine depreciation are found by the Board to be reasonable, need not consider whether agreement between the contractor and IRS is final and conclusive on the issue of allowability. American Electronic Labs, Inc., 65-2 BCA 5020.

24.6 Residual Value. Government is precluded from retroactively insisting upon a residual value when the contractor and the Government had established a practice of negotiating overhead costs based on no residual value. Fairchild Hiller Corp., 69-1 BCA 7657.

24.7 Cost Basis - IRS. Government must under ASPR 15-205.9 accept the same cost basis for costing purposes as IRS accepts for tax purposes, notwithstanding the ASPR was not amended until 1965 to refer to the International Revenue Code "as amended". Ibid.

- 24.8 Useful Life - Retroactive Adjustment - IRS. Contractor cannot, in 1964, retroactively shorten the useful life of buildings and thereby increase depreciation costs in 1962-64 (even though 1962-64 years are open), since contractor is unable to prove that the IRS has sanctioned the change or approved the excess depreciation charges. However, with respect to machinery, contractor could make such retroactive adjustment, where the IRS revised its bulletin or useful lives for years not yet negotiated. (DOD, by memorandum, sanctioned such change, by stating that ASPR 15-205.9 would be interpreted pursuant to the revised bulletin even though the ASPR would not be revised until a later date). Ibid.
- 24.9 Expensing Capital Items. See Air Products, Inc., 1962 BCA 3451, for discussion regarding expensing capital items under \$500 (pre-1960 ASPR).
- 24.10 Moving Expenses. Contractor should capitalize expenses for moving its entire business from N.Y. to Colorado (including salaries and wages for planning and actual moving expense) and amortize over a five year period. Proper to allocate to Government contracts notwithstanding the move was not required for the performance

of such contracts, since was matter of management discretion. Stanley Aviation Corp., 58-2 BCA 1965.

24.11 Useful Life - Retroactive Change; Change from Straight Line to Double Declining Balance Method. Contractor was not permitted to change the useful life of an asset retroactively but was permitted to change from the straight line method to double declining balance formula in computing depreciation costs included in overhead. Was also allowed to recover as depreciation during life of contract the full cost of a pipeline built during contract period less its residual value although contractor had used different method of depreciating both the pipeline and its plant facilities in its tax returns. Big Three Industries, Inc., ASBCA 16949 and 17331, 74-1 BCA 10,483. However, see Potomac Scheduling Co., 78-1 BCA 12,887.

24.12 Use of a Two Year Variance. Contractor held entitled to equipment depreciation costs under its contract for convenience of the Government computed on the basis of a two-year variance factor because such variance factor was reasonable and had been typically used by contractor in the past. C.W. McGrath, Inc., 77-1 BCA 12,379.

24.13 Usage Method of Depreciating Not Representative of Actual Depreciation. Contractor held not entitled to use a G&A expense rate utilizing a G&A allocation base which included usage method depreciation on a nearly idle facility because such usage depreciation formula did not fairly represent actual depreciation and resulted in a higher G&A expense rate being applied under his cost reimbursement contracts. ASPR 15-205.9(a) requires that depreciation be distributed over estimated useful life in a logical manner which contractor's method failed "to achieve". Also, held that contractor not permitted to take the full depreciation of a nearly idle facility as G&A expense because the facility was not necessary when acquired by contractor and its costs could have been reduced or eliminated by subletting, renting, or selling it. Such costs also could not be reimbursed as idle facility costs under ASPR 15-205.12(b) or (c) because it had not been shown that they could not have been reduced or eliminated. Hercules Inc., ASBCA 18382, 77-1 BCA 12,394.

24.14 Continuing Depreciation on Helicopter Sold at a Profit. Contractor held not entitled to claim continuing depreciation costs on a helicopter he owned following terminations of his contract for convenience of the

Government because he merely held the helicopter in his inventory instead of selling it or leasing it as he could have readily done, and when he had sold it he had made a profit on it. However, he was allowed a rental cost on another helicopter rented from another company for performance of the contract, and the amount he was allowed as rental was based upon the depreciation rate used by the owner of the helicopter since it and several other helicopters had been rented under an agreement stating a lump sum rental amount which could not be readily allocated equitably to each of the helicopters being rented. Globe Air, Inc., 78-1 BCA 13,079.

25.0 EMPLOYEE MORALE, HEALTH, WELFARE AND
FOOD SERVICE AND DORMITORY COSTS AND CREDITS

- 25.1 Employee Cafeterias. Contractor is entitled to include in overhead occupancy costs of operating employee cafeterias (property taxes, building maintenance, insurance, and depreciation), including cost of vending machines, even though cafeteria is operated by a licensee under an agreement whereby a percentage of the profits is irrevocably paid into an employee welfare fund. (Decision under 1 December 1965 ASPR 15-205.14; however, Board reaches same conclusion regarding 1966 costs under the current ASPR 15-205.10 which combined the two provisions). General Dynamics Corp., 69-1 BCA 7452.
- 25.2 Recreation and Related Travel. Travel and associated expenses for employees' participation of a golf tournament unallowable under contract for operation of AEDC, since contractor's own employee manual precluded such reimbursement to the employees. Aro., Inc., 69-2 BCA 7868.

- 25.3 Tuition Costs. Contractor was allowed reimbursement for tuition costs incurred in paying tuition of children of certain high level employees. Cornell Aeronautical Laboratories, Inc., ASBCA 8536, 1964 BCA 4047.
- 25.4 Company Magazine; Motion Picture Production and Showing on Local Television. Contractor's costs incurred in publishing and mailing a monthly magazine reporting on its business activities to both its employees and hundreds of non-employees and in producing and showing on local television stations a movie depicting its growth and expansion held to be reimbursable as necessary to the morale of its employees and its overall business operations. The Boeing Company, ASBCA 14370, 7302 BCA 10,325. Also see Aerojet General Corp., ASBCA 13372, 73-2 BCA 10,164.

26.0 ENTERTAINMENT COSTS

- 26.1 Club Dues, etc.. Army-Navy Club dues, football tickets, and meals and lodging for non-employees are entertainment expenses and unallowable under ASPR 15-205.11. American Electronic Labs, Inc., 65-2 BCA 5020.
- 26.2 Related Travel. Travel costs associated with unallowable entertainment is unallowable. Capitol Engr. Corp., 68-1 BCA 6833. See also Lulejian and Associates, Inc., 76-1 BCA 11,880.
- 26.3 Luncheons and Conferences. Contractor's costs labeled "luncheons and conferences" were disallowed in a termination claim where proof showed costs to have been incurred in entertaining visitors and contractor officials. Trustee In Bankruptcy for Argus Industries, Inc., ASBCA 12829, 71-2 BCA 9015. To same effect, see Manuel M. Liodas, Trustee in Bankruptcy, ASBCA 12829, 7102 BCA 9015.
- 26.4 Association Dues. Dues paid to and costs incurred in attending national conventions, banquets, and meetings of the Air Force Association, Association of the United

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States Army, and the Navy League were held unallowable as donations, entertainment and advertising costs as were contractor's costs of a company management lawn party and dinner, including a motion picture provided for the occasion, and contractor's hosting of and providing transportation for the foreign and United States press, members of the Logistics Management Institute, and the Seattle Chamber of Commerce. The Boeing Company, ASBCA 14370, 7302 BCA 10,325.

27.0 COSTS OF IDLE FACILITIES AND IDLE CAPACITY

- 27.1 Lease. Absent proof to contrary by contractor, Board will accept the C.O.'s determination of the percentage of idle space of rented facilities, notwithstanding the lease did not have termination privileges. Unallowable costs include taxes and insurance, electricity and fuel, rent, maintenance, and real estate taxes. 'Cook Electric Co., 66-2 BCA 6039 (compare 27.2 below).
- 27.2 Lease. Government is not entitled to an arbitrary reduction in allowance for rental costs where a portion of a rented facility has become excess, since Government has not shown that rental was unreasonable when originally contracted for, and no showing contractor had an opportunity to reduce costs under the lease when the excess developed. Vare Industries, Inc., 68-2 BCA 7120 (cf. 27.1 above).
- 27.3 Stand-by Capacity. Contractor is entitled to charge 100% of factory burden associated with unused capacity to a CPFF contract which required that such capacity be held in a stand-by status. Conversely, Government would have legitimate complaint had such capacity been

required for a commercial program and the contractor had attempted to allocate any portion of the burden assignable to that unused capacity to Government contracts. Unusual circumstances require abnormal allocations of costs. Fred D. Wright Co., Inc., 1962 BCA 3432.

27.4 "Normal" Idle Space. Under (old ASPR 15-205.12, 13% idle space is not allowable since contractor did not prove such space was necessary for standby purposes. Fact that 13% was "normal" - or even less than the average for other companies - does not make the costs associated with the idle space allowable. Avco Corp., 66-1 BCA 5360.

27.5 Idle Facilities -- Allocability. Contractor's idle facility costs resulting from unforeseeable close down of plant which it had constructed in Florida were allowable and reimbursable under its cost-type contracts and were properly allocated to the main plant's G&A expenses because Florida plant had operated as part of contractor's main division which had benefitted from its operation. Aerojet General Corp., ASBCA 15703, 73-1 BCA 9937.

- 27.6 Reserve Facilities. Contractor's costs incurred by idleness of facilities kept in reserve or standby status to perform Government work at request of Government were allowable and reimbursable under construction CPFF contracts. Big Three Industries, Inc., ASBCA 16949 and 17331, 74-1 BCA 10,483.
- 27.7 Equipment Becoming Idle Following Wrongful Termination. Contractor held entitled to reimbursement for costs if idle equipment in its plant which became idle as a result of the wrongful termination of its contract by the Government. Southland Mfg. Corp., ASBCA 16830, 75-1 BCA 10,994.
- 27.8 Idle Facility Not Necessary When Acquired. Contractor held not entitled to idle facility costs where the idle facility had not been necessary for contract performance when acquired and since costs could have been avoided altogether or reduced by selling the facility or leaving it. Hercules Inc., ASBCA 18383, 78-1 BCA 12,394.
- 27.9 Idle Facility Was Necessary When Acquired. Contractor held entitled to full recovery of idle facilities costs allocated to its contracts through its overhead

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pool where acquisition of the facility had been necessary when it was acquired, it had become idle due to causes that were not reasonably foreseeable, and contractor had used reasonable efforts to sell or lease such facility. General Dynamics Corp., ASBCA 19607, 78-1 BCA 13,203.

28.0 COSTS OF FINES AND PENALTIES

28.1 Death Benefit Payment to Employee's Widow. Contractor's costs incurred in making a death benefit to the widow of one of its employees pursuant to award made by State Industrial Accident Commission held not to be a fine or penalty and were allowable and reimbursable under its CPFF contracts since there was no willful misconduct, gross negligence, or bad faith on part of contractor managerial personnel which had caused employee's death. McDonnell-Douglas Corp., NASA BCA 865-28, 68-1 BCA 7021.

28.2 Workmen's Compensation Payments to Injured Employees. Contractor's costs incurred in satisfying workmen's compensation awards made by the State Industrial Accident Board to two of contractor's employees for on-the-job injuries received by them held not to be a fine or penalty but an allowable and reimbursable cost since employee's injuries had not been caused by any gross negligence, willful misconduct or bad faith of any of contractor's managerial personnel. Olin Corp., ASBCA 15688 and 15818, 72-2 BCA 9539.

28.3

Costs of Conciliation Agreements. Contractor costs of conciliation agreements settling suits brought against him for alleged violations of the Civil Rights Act of 1964 held to be allowable and not to be costs of fines or penalties since contractor was not adjudged guilty of any violation of the statute and had no penalties or fines assessed against it by any court. Ravenna Arsenal, Inc., 74-1 BCA 10,375 and 74-2 BCA 10,937. Also see Hayes International Corp., 75-1 BCA 11,076.

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FRINGE BENEFITS

(See 21 of this publication)

30.0 INSURANCE AND INDEMNIFICATION

30.1 Uninsured Loss. Where Government disapproved contractor's request to obtain insurance and premiums would have been an allowable cost, subsequent theft losses are allowable as a direct cost. Capitol Engr. Corp., 68-1 BCA 6833.

30.2 Premium Refund - Credit. See 6.3 and 6.4.

Note: The Cost Accounting standards Board has adopted a Cost Accounting Standard providing criteria for measuring insurance costs, assigning such costs to cost accounting periods, and allocating insurance costs to cost objectives. It becomes effective 10 July 1979.

31.0 INTEREST AND OTHER FINANCIAL COSTS

- 31.1 General. Interest and charges on borrowed capital used to finance contractor's operation are not allowable per ASPR 15-205.17. Navgas Inc., 65-1 BCA 4533. See also Midlands Community Action Agency, Inc., ASBCA LD-17, 73-1 BCA 9790. Also see Big Three Industries, Inc., 74-1 BCA 10,483; Mojave Enterprises, 74-1 BCA 10,431; Southland Mfg Corp., 75-1 BCA 10,994; Creative Electric, Inc., 76-1 BCA 11,863, af'd. on recon. 76-2 BCA 12,007; Leonard Blinderman Const. Co., 76-2 BCA 12,048; Vanguard Pacific, Inc., 76-2 BCA 12,140.
- 31.2 Accounts Payable and Judgments. Interest on judgments and accounts payable are not allowable under 15-205.17 unless such charges by the contractor's creditors (or judgment holders) are due to the fault of the Government. Ibid.
- 31.3 Claims Against Government. Contractor's claim for interest associated with Government's delay in paying claim is denied. Hans Schmoldt, 68-2 BCA 7318; QVS Inc., 1963 BCA 3699; No. Kansas Telephone Co., et al, 65-1 BCA 4735; Keco Industries, ASBCA 15061 et al, 71-1 BCA 8698 and 8713; Farrell Lines, Inc.,

ASBCA 15768, 73-2 BCA 10,177. However, Comptroller General does not object to contractual provision for payment of interest on delayed payment. Comp. Gen. B-174001, Oct. 27, 1971.

- 31.4 Included in Lease Costs. Rental costs paid by contractor for use of leased buildings in performance of CPFF contracts may properly include mortgage interest ultimately paid by owner - lessor, provided total rental is reasonable. Loral Electronics Corp., 66-2 BCA 5752 (affirming 66-1 BCA 5583).
- 31.5 Federal Procurement Regulations. Mortgage interest expense allowable under CPFF contract since FPR did not preclude such payment in this instance. American Chemical Society v. U.S., Ct. Cls. Comm. Rpt. 15 CCF 84,120.
- 31.6 Fixed Price Contracts. Where ASPR Section XV is only a guide, interest and advertising expense may be considered in pricing a contract change where to do otherwise would result in other than an equitable adjustment. R.W. Borrowdale Co., 69-2 BCA 7881. See also Luzon Stevedoring, ASBCA 11650, 68-2 BCA 7193; Roscoe-Ajax Corp., Inc., ASBCA 12110, 71-1 BCA 8828.

- 31.7 Included In Termination Claim. Interest and factoring costs included in termination claim not allowable for prohibited by present ASPR which is applicable to both cost and fixed price contracts. Trustee In Bankruptcy for Argus Industries, ASBCA 12829, 71-2 BCA 9015. However, see C.W. McGrath, 77-1 BCA 12,379.
- 31.8 Redemption and Conversion of Debentures and Stock Split. Costs of redeeming and converting outstanding debentures calculated to make marketability of contractor's stock more attractive and costs of a stock split and issuance of additional certificates resulting therefrom held not to be unallowable under ASPR 15-205.17 as costs of refinancing operations but allowable as "Other Business Expenses" under 15-205.24 notwithstanding fact that wording of 15-205.17 seems to prohibit their allowability. The Boeing Company, ASBCA 14370, 73-2 BCA 10,325.
- 31.9 Interest On Borrowings Made Necessary By Wrongful Withholding of Progress Payments. Contractor held not entitled to reimbursement for interest costs incurred because of borrowings it had to make due to the Government's wrongfully withholding its progress

payments since 15-205.17 forbids allowance of interest on borrowings. Systems Consultants, Inc. ASBCA 18447, 75-2 BCA 11,402.

31.10 Extension of Contract to Perform Additional Work.

Allowability of contractor's interest costs proven to have resulted from a contract extension required to perform additional work ordered by the Government held prohibited by the proscription contained in 15-205.17. Rix Industries, ASBCA 20,505, 76-1 BCA 11,656.

31.11 "Imputed Interest" on Equity Capital. Contractor held entitled to recover, as profit, the "imputed interest" on equity capital it used to finance changes in the contract work because the concept of equitable adjustment requires that a contractor be compensated for use of private capital on changes either as costs or as profit; and had this contractor not had to fund the changes, it would have put the capital into interest-bearing accounts. Therefore, contractor was allowed to recover "imputed interest", as profit, not as costs, on the equity capital it used to finance increased costs of contract performance caused by the changes despite the prohibition in 28 USC 2516(a)

against recovery of interest from the Government, because the expense incurred did not result from Government delay in making payment, but from the increased use of capital. For this reason, under the rule of Bell v. U.S. 13 CCF 82,406 the prohibition of 28 USC 2516(a) was not applicable. New York Shipbuilding Co., A Division of Merritt Chapman & Scott Corporation, ASBCA 16164, 76-2 BCA 11,979.

The same reasoning was again applied by the ASBCA to compensate the contractor for his interest expenses in its recent decision in Fischback & Moore International Corp., ASBCA 18146, 77-1 BCA 12,300. There it was held that, although contractor's failure to prove the relationship between borrowing and Government-caused delays precluded his recovery of interest expense, he was entitled, in the alternative, to an extra profit factor since it was evident that he had invested either his equity or borrowed capital during the period he was delayed in performance of the changed work. See also Baifield Industries, Division of A-T-O, Inc., ASBCA 13418 et al, 77-1 BCA 12,308.

- 31.12 Necessity For Borrowing Not Shown. Contractor held not entitled to claimed interest costs as part of equitable adjustment for changes where he failed to show either the necessity for borrowing or that borrowed funds

were used for performing his contract. Blinderman Construction Co., ASBCA 20427, 7701 BCA 12,508; Dravo Corporation, 77-1 BCA 12,533.

- 31.13 Interest Allowed By Terms of Contract and Laws of Situs of Performance. Contractor held entitled to recover additional interest paid to his lender as a result of Government delay in working progress payments to the contractor because both the contract terms and the laws of the country in which the contract was executed and performed allowed recovery of interest paid by a contractor on borrowed funds used in performance of the contract work. Elektro-Industrie-Montage, Ingenieur Rudolf H. Winter, ASBCA 20509, 77-2 BCA 12,729.
- 31.14 Failure to Increase Billing Rates. Contractor held to reimbursement for interest he paid on borrowings needed to perform a CPFF contract because he did not prove, as he alleged, that the Government's failure to increase provisional billing rates for overhead caused him to have to borrow more than he had originally planned to borrow to finance his contract performance. W.F. Sigler & Associates, 78-1 BCA 13,011.

31.15 Interest on Sums Withheld as Liquidated Damages.

Because his contract contained a clause permitting him to be paid interest, contractor was held to be entitled to receive interest on money wrongfully withheld from him as liquidated damages and on his additional expenses incurred due to Government caused delays. Proserv, Inc., ASBCA 20768, 73-1 BCA 13,066.

31.16 Clause Prohibiting Interest Payments. Held that contractor's claim for interest on funds borrowed during contract performance had to be disallowed under a provision incorporated into the contract subsequent to its execution which provided that no interest would be allowed on any claim made under the contract effectively barred contractor's interest claim. Systems & Computer Information, Inc., ASBCA 18458, 78-1 BCA 12,946.

31.17 Delay In Payment of Contractor Invoices. Held contractor not entitled to interest on late payments by Government of his invoices for amounts due him on his contract for no provision of the contract nor any statute authorized this to be done. William C. Cox, Inc., ASBCA 23057, 79-1 BCA 13,582. On the other hand, where the contract contained the "Payment of Intent

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on Contractor's Claim" clause, he was allowed to
recover his claimed interest. Raby Hillside
Drilling, Inc., ASBCA 22192, 79-1 BCA 13,591.

32.0 LABOR RELATIONS COSTS

- 32.1 Arbitration Proceeding. Contractor costs incurred in submitting to arbitration proceedings for settlement of employee grievances under a collective bargaining agreement are allowable and reimbursable under his cost reimbursement contracts. Machine Products Company, ASBCA 58-1, BCA 1704.

33.0 LOSSES ON OTHER CONTRACTS

- 33.1 "Loss Contract" Defined. 15-205.19 contemplates a contract under which contractor originally intended to break even or make a profit, or costs in excess of the original estimate under a cost-sharing agreement. (N.B: Board "cautions" that decision is limited to facts of case - opposite result would have given the Government a windfall and "common sense" dictated this result). General Dynamics Corp., 66-1 BCA 5680. (See 49.2).
- 33.2 Deferred R&D. Under the principles enunciated by the Court of Claims in Bell Aircraft Corp. v. U.S., 100 F Supp 661 (aff'd 344 U.S. 860) and by the ASBCA in Kellett Aircraft Corp., 60-1 BCA 2584, a contractor may capitalize R&D costs incurred without a contract (IR&D) or under an R&D contract, provided: (i) were genuine R&D costs when incurred; (ii) contractor had reasonable prospect of recovery; and (iii) under subsequent cost-type contracts sought to be charged with a share of the initial R&D expense, such contracts contain a provision allowing such charge. Thus, where contractor incurred unexpected R&D costs

under an FPI production contract, and decided only after all costs were incurred to attempt to capitalize the R&D, such costs are those which the contractor bore the risk of loss under the FPI contract and cannot be capitalized. Sperry Rand Corp., 66-1 BCA 5403.

- 33.3 Deferred R&D. Costs properly capitalized under previous R&D contract may be recovered in definitization of fixed price letter contract, where letter contract was entered into on such basis. Such capitalization is customary and recognized by 15-205.35(g), and is not a loss under 15-205.19. The G.C. Dewey Corp., 69-1 BCA 7732. (See also Lockheed Aircraft Corp., 69-1 BCA 7635).

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34.0 MAINTENANCE AND REPAIR COSTS

34.1 Capitalization v. Current Expense. See 24.1.

35.0 MANUFACTURING AND PRODUCTION ENGINEERING COSTS

- 35.1 Leading cases on manufacturing and production engineering include the following: LaScola Industries, Inc., ASBCA 7134, 62 BCA 3385; Aluminum Specialty Co., ASBCA 6228, 63 BCA 3784; Sutton Const. Co., ASBCA 8405, 63 BCA 3762; Gailbraith & Son, Inc., ASBCA 10769 67-2 BCA 6488; Systems, Inc., ASBCA 8235, 63 BCA 3984; Lumen, Inc., ASBCA 8364, 64 BCA 4436; Kings Electronics Co., Inc. v. U.S., 169 Ct. Cl. 433; Bliss Co., ASBCA 9489, 68-1 BCA 6906; Tandy & Allen Const. Co., Inc., ASBCA 12486, 69-1 BCA 7536; Acme Missiles & Const. Corp., ASBCA 11786, 69-2 BCA 8057; Viewlex Inc., ASBCA 12584, 71-1 BCA 8692; Western Electric Corp., ASBCA 11474, 68-1 BCA 6793; Kurz & Root Co., Inc., ASBCA 11436 68-1 BCA 6916; Cryo-sonics, Inc., ASBCA 13219, 70-1 BCA 8313; Telephonics, ASBCA 13013, 70-1 BCA 8217; Continental Electronics Mfg. Co., ASBCA 14749, 71-2 BCA 9108; Battelle Memorial Institute, ASBCA 20626, 78-1 BCA 12,884, Aff'd on recon. 78-1 BCA 13,183.

36.0 MATERIAL COSTS*

- 36.1 Subcontractor Judgment. CPFF prime contractor is not entitled to charge Government for cost of judgment obtained by subcontractor against the prime, nor for prime's legal fees in unsuccessfully defending the suit, where the subcontract required Government approval but such approval was never obtained. Where judgment is for an unallowable cost neither the judgment nor the legal fees are allowable - contracting officer properly looked behind the judgment to the underlying claim. McDonnell Douglas Corp., 68-2 BCA 7316.
- 36.2 Subcontractor Judgment. Where prime adequately protected Government's interests and subcontractor's judgment is for a cost which is not unallowable under the DAR, such judgment is allowable under prime's cost type Government contract. The Boeing Co., 67-1 BCA 6350.
- 36.3 "Incurred" Costs. Where ASBCA is of opinion prime is not obligated to pay certain costs to subcontractor under the terms of the CPFF subcontract the costs are not "incurred" and are therefore not reimbursable

*Cases digested under this section include those involving subcontracts, whether charged direct or indirect.

under the CPFF prime contract. Westinghouse Electric Corp., 66-1 BCA 5687.

- 36.4 CPPC. Subcontract with provision for payment based upon a percentage of prime's costs violates statutory restriction against CPPC contracts. The restriction of the statute applies where the manner of application of an agreement violates the statute, even though the written words of the agreement, per se, do not. Air Repair, G.M.B.H., 67-1 BCA 6115.
- 36.5 Direct v. Indirect: Utility Costs. Costs under special agreement with utility company are not allowable as direct costs (but are allowable in overhead) since the agreement deviated from contractor's established practice of charging only certain utility costs direct. Bethlehem Steel Co., Inc., 65-1 BCA 4676 (aff'd 65-2 BCA 5004).
- 36.6 Markup. Under contract calling for payment for "direct parts and materials" contractor is entitled to include applicable G&A, but no profit. Maney Aircraft Parts, Inc., 67-2 BCA 6481.

- 36.7 Markup. Where prime contractor (a joint venture) has no established material expense rate, a markup of 15% for overhead and 10% for profit based on value of subcontract is excessive, since these markups combined with the subcontractor's markup on the value of the sub's direct labor would be 53%. Board allowed 7% for prime's overhead and 5% for profit. Cimarron Construction Co. and Williams Brothers Company, Joint Venturers, 69-2 BCA 8003.
- 36.8 Materials Handling Fee. Contractor is not entitled under a T&M contract to charge a 10% materials handling fee unless it is clearly shown that such costs are excluded from the "hourly rate". Lee Associates Inc., 69-2 BCA 7864.
- 36.9 Catalog Price. Contractor's catalog prices, in excess of actual costs, may be charged under T&M contract only if catalog was in effect when the materials were furnished. Ibid.
- 36.10 Subcontractor IR&D. CPFF contractor may include his CPFF subcontractor's IR&D costs where the IR&D applied to supplies and services of the subcontract (case decided under pre-1960 ASPR). Martin Marietta Corp., 68-1 BCA 6752.

- 36.11 Intracompany Transfers - Profit. Profit on intracompany transfers is allowable only when the item: (i) is regularly manufactured by seller; (ii) is available from one or more sources in open market in significant quantity; (iii) price is not in excess of lesser of current market price or price to most favored customer; and (iv) qualified as a commercial item sold in substantial quantities to the general public. Westinghouse Electric Corp., 67-1 BCA 6361.
- 36.12 Intracompany Transfer - Profit. Where CPFF contract was negotiated on the basis that intracompany transfers would include profit as an allowable cost, this constituted an "advance understanding" under 15-107 which takes precedence over 15-205.22(e). (See 1.2). Yardney Electric Corp., 66-2 BCA 5760.
- 36.13 Purchase from Affiliate. Proper for contractor to include cost of materials acquired from affiliate based on price charged by the affiliate, where contractor could not have reduced the cost through competitive bidding. In making latter determination, proper to include the cost of qualifying sources other than the affiliate. Missile Systems Corp. of Texas, 1964 BCA 4398.

36.14 Subsidiary. Transaction with subsidiary must be an "arms length transaction"; otherwise, billings from the subsidiary are allowable under the parent's CPFF contract only for the reasonable value of the services - not to exceed the subsidiary's cost. (Board holds that the reference in 15-107 to the need for "special attention" where there are no competitive restraints is not a part of the CPFF contract but that the contractor "may well be charged with notice of its contents"). Further, the PCO's request for an audit of the subsidiary's books is reasonable. The Garrett Corp., 69-2 BCA 7797.

36.15 Actual Costs Incurred v. Price Changed Affiliate Subcontractor. Contractor held entitled to reimbursement for the entire material costs incurred by his affiliate in performing a subcontract, even though the subcontract was priced at a lower amount in accordance with contractor's established notice of pricing interorganization transfers of materials. The excess cost of the affiliate performing the subcontract over the total price of the subcontract could not be disallowed under ASPR 15-205.22(e) for such cost was an actual incurred cost to both the

affiliate subcontractors and the contractor.

Teledyne Industries, Inc., Teledyne Ryan Aeronautical Division, ASBCA 20900, 77-1 BCA 12,416.

- 36.16 Materials Used in Performance of Contract Under Conditions Making Materials Expendable. Held contractor was entitled to reimbursement for total expenditures for low cost items such as cameras and tape recorders purchased for use in performing the contract notwithstanding the fact that some of them were either lost, damaged or rendered valueless during contract performance or they were expendable items. Environmental Associates, Inc., 78-2 BCA 13,392.

37.0 ORGANIZATION COSTS

- 37.1 Tax Avoidance. Although organization costs are unallowable under 15-205.23, legal fees for efforts to obtain a favorable classification for state tax purposes are allowable since such efforts resulted in lower costs to the Government. Navgas, Inc., 65-1 BCA 4533.
- 37.2 Conversion and Redemption of Debentures and Stock Split. Contractor's costs incurred as trustee's fees, legal fees, printing of stock certificates, Federal stock taxes, and other costs incurred in connection with the conversion and redemption of its debentures outstanding and issuance of stock in a stock split were held not to be unallowable as either interest and other financial costs under ASPR 15-205.17 or as reorganization costs under ASPR 15-205.23 but allowable under ASPR 15-205.24 as "Other Business Expenses". Legal fees and other costs incurred in defending a contractor against a stock holder suit were also allowable as a necessary cost of doing business as were legal fees incurred in negotiating credit and loan agreements with several banks. The Boeing Company, ASBCA 14370, 73-2 BCA 10,325.

37.3 Contractor's Organization of New Corporation Sub-contractor at Government Request. Prime contractor's costs incurred in organizing a new corporation, at the request of the Government, for the sole purpose of providing rare materials required to perform prime contract held to be allowable and reimbursable as prime contract costs notwithstanding fact that organization costs are generally made unallowable by ASPR 15-205.23. American Electric, Inc., ASBCA 16635, 76-2 BCA 12,151.

37.4 Cost of Acquiring New Business. A contractor's cost of acquiring and attempting to acquire new business, incurred prior to the revision of ASPR 15-205.23, which was necessary for the overall operation of his business but for which no direct relationship to any particular cost objective could be shown constituted a concrete monetary benefit to the Government because contractor's expanded business resulted in reduced fixed overhead expense on all his contracts were held to be allowable. However, the same type of costs incurred by contractor after the revision of ASPR 15-205.23 were required by the revised ASPR to be disallowed. Dynalectron Corporation, ASBCA 20240, 77-2 BCA 12,835.

- 37.5 Legal and Accounting Costs Incurred In Setting Up Contractor's Books and Records, Filing Tax Returns for the Partners, and for Renewing Leases. Contractor's legal and accounting costs held not allowable because they had been incurred in connection with its organization or solely for the benefit of the contractor and not in connection with either the performance or administration of its Government contract. The Housing Authority Of The City Of New Haven, 78-2 BCA 13,237.

38.0 OTHER BUSINESS EXPENSES

38.1 Public Relations. Cost of semi-monthly technical reports and brochures published and distributed by contractor, costs of photographs and fact sheets provided by contractor for news releases, costs of salaries of personnel operating contractor's liaison with news media and others held not to be unallowable as advertising but allowable under ASPR 15-205.24 as "Other Business Expenses". Aerojet General Corp., ASBCA 13372, 73-2 BCA 10,164. Gov't. Mot. for Reconsid. den., 7302 BCA 10,307.

38.2 Publications: Public Relations in Foreign Countries; Domestic Public Relations; Production and Television Showing of Motion Picture; International Trade Fair.

Salaries and costs of operating contractor's domestic public relations department and public relations department in various foreign countries, costs incurred in making press releases in the United States and in foreign countries, costs of producing and being shown on three television stations a motion picture depicting history and accomplishments of contractor, costs of publishing and distributing company magazine to personnel other than contractor

employees, costs incurred in printing and mailing invitations to and providing air transportation to guests invited to banquet given by city of Seattle and a cash contribution made to city of Seattle for sending representatives of its International Trade Fair to Japan were held not to be advertising, entertainment or contributions but allowable costs under ASPR 15-205.24 as "Other Business Expenses." The Boeing Company, ASBCA 14370, 73-2 BCA 10,325.

- 38.3 Losses From Operating Computer Center as Sideline Business. Contractor held entitled to charge and be reimbursed for a prorate share of the costs of operating computer center which was a sideline business, which it had operated at a loss, because it had used data generated by the computer center in performing its contract for administering the Medicare Program. Blue Cross Association, ASBCA 20338, 76-1 BCA 11,828.

- 38.4 Costs of Study to Evaluate Pension Plan Investments and Management. Costs incurred by contractor in making study to evaluate its pension plan investments and management held to be allowable. Lulejian and Associates, Inc., ASBCA 20094, 76-1 BCA 11,880.

- 38.5 Insurance On Lives of Key Employees. Contractor held entitled under ASPR 15-205.16 to reimbursement for allowable share of insurance premium costs paid on the lives of certain of its key employees as a part of the general conduct of its business since the purpose of the policies was to minimize disruption in operations which would occur upon the death of such key employees by using the policy proceeds to engage outside consultants to assist in continuing operations. Virginia Electronics Company, Inc., ASBCA 18778, 77-1 BCA 12,393.
- 38.6 Subcontract Administration Fee. Contractor held not entitled to payment of a claimed fee for administering a subcontract since his contract did not provide for payment of any such fee and the standard ASPR payments clause contained in his contract provided that reimbursement of subcontracting costs was limited to amounts paid to the subcontractor. Systems Engineering Associates Corp., ASBCA 21846, 77-2 BCA 12,740.
- 38.7 Maintenance of Idle Facilities. ASBCA held that the idle facility costs which contractor was entitled to recover included his costs of maintaining the idle facility after it had become idle and been closed since such

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costs were part of the on-going business expenses of the contractor and as such were reimbursable under ASPR 15-205.24. General Dynamics Corp., ASBCA 19607, 78-1 BCA 13,203.

39.0 RELOCATION COSTS

39.1 Return of Employees From Job Site in Foreign Country.

Contractor costs incurred for movement of employees to job site in foreign country and their voluntary return to United States in less than one year at their own request were unallowable under either ASPR 15-205.25, 15-205.33, or 15-205.46; however, costs incurred in moving certain employees to the job site and returning them to the United States after discharge by contractor for cause in less than one year were allowable under ASPR 15-205.46. Page Communications Engineers, Inc., ASBCA 15076, 71-2 BCA 9088. To the same effect see Philco-Ford Corp., ASBCA 15038, 72-1 BCA 9211.

39.2 Termination of Follow-On Contract. Contractor held entitled to reimbursement for relocation costs incurred in having to move employees out of premises due to termination for convenience of Government of a follow-on contract. Systems Development Corp., ASBCA 16942, 73-1 BCA 9788.

39.3 Loss on Purchase and Sale of Employees Homes.

Contractor's recovery of loss sustained on its purchase and subsequent resale of homes of its employees in connection with their relocation held limited to the 8% of the sales price of such homes in accordance with ASPR 15-205.25. Detroit Diesel Allison Division, General Motors Corp., ASBCA 18736, 74-2 BCA 10,964.

39.4 Costs Incurred for Employees Voluntarily Leaving Foreign Country Prior to End of One Year. Contractor held not

entitled to reimbursement for travel and relocation expenses of employees who voluntarily left the foreign country where the contract was being performed prior to the expiration of one year from their arrival there. Pacific Architects and Engineers, Inc., ASBCA 15380, 75-1 BCA 11,155.

39.5 Moving Employees to Job Site. Contractor's costs

incurred in moving and relocating employees to situs of contract held allowable. Martin Marietta Corp., 77-1 BCA 12,384.

40.0 PATENT COSTS

- 40.1 Patent Searches - Attorneys Fees. Allowable as reasonable and necessary business expense. American Electronic Labs, Inc., 65-2 BCA 5020.
- 40.2 Patent Infringement Suit. Under pre-1959 cost principles, legal expenses in assisting the Department of Justice in defense of a patent infringement suit, at the Department's request, are allowable. Bell Aerospace Corp., 1963 BCA 3708. However, under the current ASPR (effective with Revision 50, 2 Nov 59), such costs are unallowable per 15-205.31(c). Bell Aerospace Corp., 1964 BCA 4285.
- 40.3 Domestic v. Foreign Patents. Cost of obtaining domestic patents in contractor's name is allowable in overhead and chargeable to CPFF contracts as a "necessary" cost of doing business; cost of foreign patents, however, is not allocable to Government contracts. TRW Systems Group of TRW, Inc., 68-2 BCA 7117.
- 40.4 Direct v. Indirect. Patent expense associated with a specific contract need not be charged direct to that

contract. Similarly, the cost of maintaining a patent office may be charged indirect, with allocable portion charged to Government contracts as a "necessary" business expense, notwithstanding the allocated amount exceeds the patent activity spent on Government contracts, since the patent activity benefits the overall operation. ASPR 15-205.26 does not impose a limitation on patent expense other than those chargeable directly to Government contracts. The Boeing Co., 69-2 BCA 7980. (see also 45.8.)

41.0 PENSION PLANS

- 41.1 See 15.0 through 21.0 of this publication.
- 41.2 Reasonableness. Contractor was not entitled to reimbursement for pension plan contributions because the contributions for the particular year were not reasonable nor in accordance with sound actuarial or accounting practice. Sanders Associates, ASBCA 15518, 73-2 BCA 10,055.
- 41.3 As Part of Total Employee Fringe Benefit Package. See Lulejian and Associates, Inc., supra (3.15).

42.0 PLANT PROTECTION COSTS

- 42.1 Method of Allocating Plant Protection Costs. Contractor's allocation of his costs incurred in providing protection for his plant to his Government contracts on the basis of space in his building occupied by Government property which he had to protect was held proper. Transcendental Aircraft Corp., ASBCA 5823, 61-1 BCA 2952. See also Fellows & Stewart, Inc., ASBCA 8256, 63 BCA 3857.
- 42.2 Watchmen and Guards. Contractor's costs incurred for watchmen and security guards to protect plants where CPFF contracts being performed are allowable and reimbursable costs. Pennsylvania Central Airline Corp., WDBCA 1185, 3 CCR 1545; William Edgar Johns & Associates, Inc., NBCA 250, 4 CCF 60141; Ericsson Co. v. U.S., 104 Ct. Cl. 397; Comb Co. v. U.S., 103 Ct. Cl. 174; Quilmette Const. Co. v. U.S., 89 Ct. Cl. 334; Walsh v. U.S., 121 Ct. Cl. 546; Clifton Products, Inc. v. U.S., 189 Ct. Cl. 118.
- 42.3 As Credit Against Damages Assessed Against Contractor. Construction contractor was entitled to have his costs incurred in providing police and fire protection

for building delivered late to Government credited against and deducted from the amount of damages assessed by the Government against him for late delivery of the building. Rich Co., Inc., ASBCA 13234, 70-2 BCA 8599.

- 42.4 May Include Insurance Costs. Contractor was entitled to include in its termination claim as a part of its plant protection costs where it had an insurable risk in the GFP in its plant after termination the reasonable expenses of insurance carried on such property and to be reimbursed therefor. Douglas Corp., ASBCA 8566, 69-1 BCA 7578.

43.0 PLANT RECONVERSION COSTS

- 43.1 Rearrangement of Alert Facilities to Accommodate Production Under Government Contract. Contractor costs incurred in rearranging its plant facilities to enable it to perform a Government contract are allowable on redetermination upon completions of the contract or as termination costs if it is terminated for the Government's convenience. Swartzbaugh Mfg. Co., ASBCA 792 (1952); Hubney Bros., Inc., ASBCA 3629, 57-1 BCA 1252; Western Cartridge Co. v. United States, 61 Ct. Cl. 482; Taylor, ASBCA 2876, 57-1, BCA 1204; Baifield Industries, Division of A-T-O, Inc., 76-2 BCA 12,0096.

44.0 PRECONTRACT COSTS

- 44.1 Special Tooling. Cost of special tooling not allowable as a direct cost to CPIF contract since not allowable as pre-contract costs. United Technology Center, 68-2 BCA 7350.
- 44.2 B&P Costs. Travel costs, samples, drawings and testing costs voluntarily incurred by the contractor prior to receipt of an FPR contract were in the nature of selling or bidding expenses, which are to be allocated in overhead in the year incurred, and are not direct costs for the purpose of redetermining the price of the contract. Channell Splicing Machine Co., 66-2 BCA 6061.
- 44.3 Effective Date of Contract. Overhead costs between date of signature and effective date of contract held unallowable for "practical purposes." Capitol Engineering Corp., 68-1 BCA 6833.
- 44.4 Production of B-1 Weapons System. Contractor's costs incurred in connection with production of B-1 weapons system before the production contract was executed by the Government held allowable and reimbursable

since they met all criteria of ASPR 15-205.30.

North American Rockwell Corp., ASBCA 15863, 72-2
BCA 9490.

44.5 Precontract Costs. Precontract costs of photo tooling, special test fixtures, and assembly and installation of production work centers held to be valid precontract costs properly allocated in prorata shares to the cost of each set of an unpriced line item ordered by the Government under a fixed price contract for data communications systems support equipment. Rockwell International Corp., ASBCA 20304, 76-2 BCA 12,131.

44.6 Costs Incurred Between Completion of First Contract and Anticipated Award of Second One. Contractor held not entitled to reimbursement for costs incurred in performing research in the interim period between his completion of one Government contract and his being awarded a second Government contract for his first contract limited the Government's obligation to the expenses incurred in performing it and the second one did not contemplate nor provide for reimbursement of interim costs incurred prior to its award. The National Committee On International Trade Documentation, 77-1 BCA 12,368; Energy Engineering Corp., 77-1 BCA 12,422.

44.7 Preparatory Costs for A Three Phase Project to be Done Under Three Different Contracts. Contractor held not entitled to recovery of claimed cost of all preparation costs allegedly incurred in anticipation of be spread over the life of an anticipated three phase project which has not been continued beyond the first phase since its firm fixed price contract was expressly limited in terms of duration and performance to phase one. Westinghouse Electric Corp., 78-1 BCA 13,133.

45.0 PROFESSIONAL AND CONSULTANT
SERVICE COSTS

- 45.1 Reasonableness. \$100 per hour fee for attorney's services, where unique expertise was required, is not unreasonable. Cryo-Sonics, Inc., 70-1 BCA 8313.
- 45.2 ASBCA Appeals. Transportation, hotel, meals, and similar expenses in connection with prosecution of appeal to ASBCA are unallowable. Keco Industries, Inc., 1963 BCA 3992. See also N.P.D. Contractors, Inc. ASBCA 14798, 71-1 BCA 8828.
- 45.3 ASBCA Appeals. Legal fees associated with ASBCA appeal, whether relating to prosecution of the appeal or settlement of the case, are unallowable under 15-205.31. Cook Electric Co., 66-2 BCA 6039. See also Keco Industries, ASBCA 15061 et. al. 7101 BCA 8698; ASBCA 12729, 71-1 BCA 8713, Western General Services, Inc., 77-1 BCA 12,278; Potomac Scheduling Co., 78-1 BCA 12,887; G.A. Karnavas Painting Co., ASBCA 22281, 78-2 BCA 13,312.
- 45.4 Consultant Fee to Retired Company President. See 20-1.

- 45.5 Legal Fees. Although legal fees for organization costs are unallowable per 15-205.23, legal costs for efforts to obtain a favorable classification for state tax purposes are allowable since resulted in lower cost to the Government. Navgas Inc., 65-1 BCA 4533.
- 45.6 Attorneys Fees - Defense of Suit by Subcontractor.
See 36.1.
- 45.7 Legal Fees - Suit by Employee. Legal fees associated with contractor's defense of claims against contractor by employee are allowable only if the claims represent allowable costs. (N.B.: criterion is not whether the employee is successful or not; rather, it is whether the employee is successful or not; rather, it is whether the cost represented by the employee's claim is an allowable type of cost). If claim is allowable, the contractor is representing the Government's best interests in defending the claims, the Government is benefited thereby, and the legal fees are allowable. Riblet Tramway Co., 66-1 BCA 5488.
- 45.8 Defense of Patent Suit. ASPR 15-205.31 prohibits the cost of defending a patent infringement suit, regardless of whether the patent covers a commercial or

Government product. The Boeing Co., 69-2 BCA 7980. (See also 40.0).

- 45.9 Termination Settlement. Legal fees associated with termination settlement proposal are allowable as an exception to the general rule barring fees associated with claims against the Government. Sundstrand Corp., 65-1 BCA 4653. See also Atlantic, Gulf & Pacific Company of Manilla, ASBCA 13533, 72-1 BCA 9415; Baifield Industries, Division of A-T-O, Inc., 76-2 BCA 12,0096; American Electric, Inc., ASBCA 16,637, 77-2 BCA 12,792; Systems Computer Information, Inc., ASBCA 18,458, 78-1 BCA 12,946.
- 45.10 Defense of Suit Arising Under Commercial Guaranty.
Legal fees incurred by contractor in defending suit arising out of guaranty in commercial sales contract held unallowable since not allocable to Government work. Such costs were either a direct cost of the commercial contract involved or a general cost of commercial business. Dynalelectron Corp., ASBCA 16895, 73-1 BCA 9909.
- 45.11 Prosecution of Claim Against Insurance Carrier. Contractor's legal fees incurred in prosecuting civil action against its insurance carrier to collect for damage caused to contractor property held allowable

under ASPR 15-205.31, citing The Boeing Company, ASBCA 10,524, 67-1 BCA 6350 and Lockheed Georgia, ASBCA 8625, 64 BCA 4325. Farrell Lines, Inc., ASBCA 15768, 73-2 BCA 10,177.

- 45.12 Advice Concerning Conversion of Debentures and Splitting Stock; Negotiation of Lending Agreements; Defense Against Stockholder Suit. Contractor's costs incurred as legal fees for advice concerning redemption and conversion of debentures and a stock split, for negotiating lending agreements with bonds, and for defending a civil suit against stockholders held to be reimbursable as professional and consultant services costs. The Boeing Company, ASBCA 14370, 73-2 BCA 10,325.

- 45.13 Consultant's Fee Regarding Hospital Administration. Contractor responsible for administration of medicare program held entitled to reimbursement for consultant's fee paid for personal advice and opinions for professional consultants in area of hospital administration. Blue Cross Association, ASBCA 16782, 73-1 BCA 9862.

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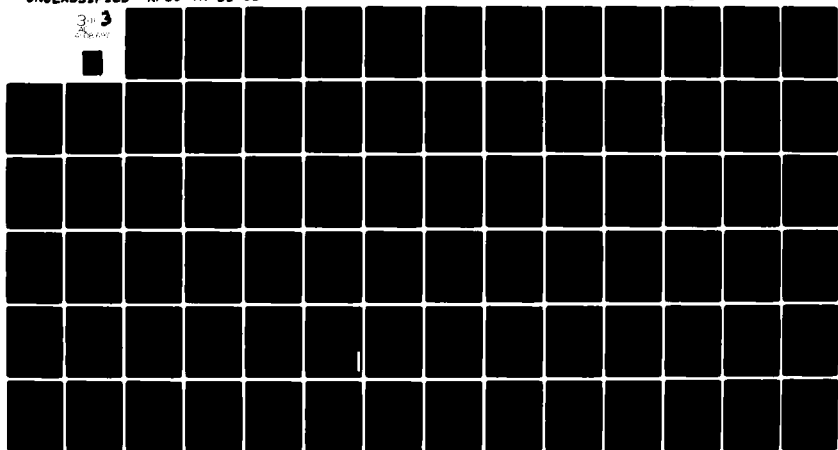
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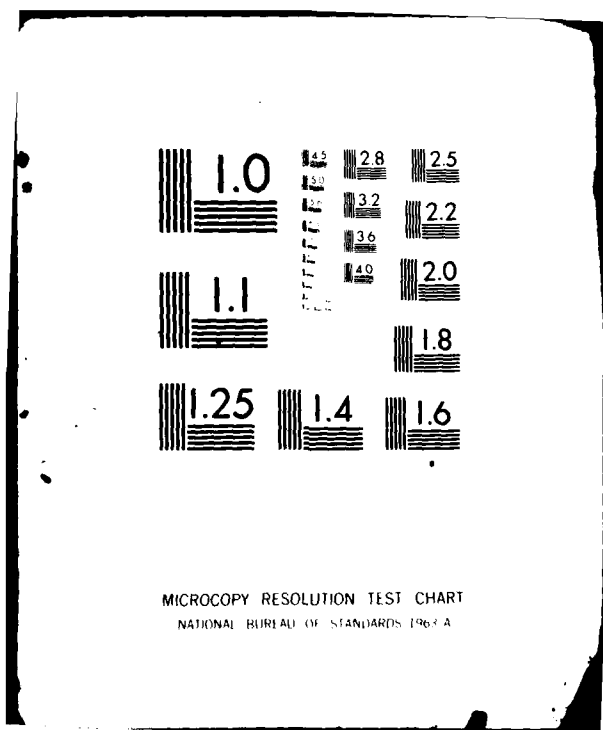
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45.14 Legal Fees Defending Against Subcontractor Suit.

Legal fees incurred in defending against action brought by a subcontractor held allowable as an ordinary and necessary business expense and properly includable in and allowable as part of contractor's termination claim. R.D. Mounts, Inc., 75-1 BCA 11,077.

45.15 Legal Fees to Obtain State Tax Refunds. Contractor held entitled to recover attorney's fees and administrative costs incurred in obtaining state income tax refunds pursuant to instructions from the Government. Detweiler Bros., Inc., ASBCA 20640, 76-1 BCA 11,664.

45.16 Legal Fees Paid As Contingent Fee For Successful Litigation Converting Default Termination to a Convenience Termination. Contractor held entitled to reimbursement under ASPR 15-205.42(f) for costs incurred in paying the contingent fee of an attorney who represented it in litigation which successfully converted a default termination to a convenience termination. Southland Mfg. Co., ASBCA 16830, 75-1 BCA 10,994.

- 45.17 Legal Fees Incurred In Defending Against Actions Under Civil Rights Act of 1964. Contractor held entitled to reimbursement for legal fees incurred in defending suit brought against it for alleged discrimination against minority employees under the Civil Rights Act of 1964 where suit was settled by compromise and not judgment rendered against contractor finding it had violated the Act. Hayes International Corp., ASBCA 18447, 75-1 BCA 11,076.
- 45.18 Legal Fees Paid for Defending Against Government's Defective Pricing Claim. Contractor held entitled to reimbursement for legal fees and related costs incurred in defending against a defective pricing claim asserted by the Government against contractor. Since this was the Government's claim against contractor the proscription contained in ASPR 15-205.31(d) does not apply. Hayes International Corp., supra (45.17). However, see Lear Siegler, Inc., ASBCA 70-20040, 78-1 BCA 13,110 in which ASBCA reached contrary conclusion and disallowed legal fees for attorney representing contractor in the ASBCA proceeding but allowed those for a different attorney charged for gathering data for use by the contractor's trial attorney in representing at the ASBCA.

- 45.19 Conciliation Agreements. Contractor costs incurred in negotiating conciliation agreements in connection with actions brought against it for alleged violations of Title VII of the Civil Rights Act of 1964 held to be allowable costs where there was no proof of violations of the statute by contractor and it negotiated the conciliation agreements as a reasonable business decision to settle the controversies at a minimum cost. Ravenna Arsenal, Inc., 74-1 BCA 10,375 and 74-2 BCA 10,937.
- 45.20 Fees for Legal Advice and Assistance Concerning Increase In Progress Payment Rates. Contractor held entitled to reimbursement for legal fees incurred in obtaining advice and assistance in submitting an application for an increase in progress payment rates and in connection with a request for an equitable adjustment in the contract price arising from the Government's failure to meet its obligations under the GFP clause since such costs were incurred before any dispute arose. Allied Material and Equipment Co., Inc., ASBCA 17318, 75-1 BCA 11,150.
- 45.21 Legal Fees Incurred Seeking Injunction to Prevent Award of Contract. Legal fees and related costs incurred by

contractor in seeking injunction in Federal District Court to prevent award of a contract by the Government held unallowable as being a claim against the Government. Hayes International Corp., supra (45.17).

- 45.22 Legal Fees and Accounting Costs for Claim Before Renegotiation Board. Held to be allowable since not within the proscription of ASPR 15.25-31(d). Grumann Aerospace Corp., 76-1 BCA 11,763.
- 45.23 Legal and Accounting Costs Incurred in Tax Court and Court of Claims After Renegotiation Board Order Determining Excess Profits and in Freedom of Information Litigation. Held unallowable as types of costs prohibited by ASPR 15-205.31(d). See Grumman Aerospace Corp., supra (45.22).
- 45.24 Legal and Accounting Costs for Participating in Overhead Rate Negotiations. Held allowable. Lulejian and Associates, Inc., ASBCA 20094, 76-1 BCA 11,880.
- 45.25 Legal Costs of Work Related to Estate Planning for Corporate Executive. Held unallowable. Lulejian et al supra (45.24).

- 45.26 Legal Costs for Defending Against Sex Discrimination Suit by Female Employee. Held allowable. Hirsch Tyler Co., ASBCA 20962, 76-2 BCA 12,075.
- 45.27 Legal Costs for Defending Employee Damage Suit Based on Contractor's Refusal to Release Employee to go to Work for Another Contractor. Held allowable. Pacific Architects & Engineers, Inc., ASBCA 21043, 76-2 BCA 11,953.
- 45.28 Consultant Services Required for Specific Contract.
Contractor held not entitled to charge as indirect costs to his cost type contracts consultant's fees paid by him in performing a specific government contract. Such costs were required to be charged directly to that specific contract. Celesco Industries, Inc., ASBCA 20569, 77-1 BCA 12,445.
- 45.29 Attorney Fees Incurred in Arbitrations Proceeding Involving Former Employee. Attorney's fees incurred in an arbitration proceeding involving a former employee were not reimbursable costs because they were not incurred in performance of the contract with the Government and were expressly disallowed under

the PFR cost principles. Also held that attorney fees incurred in prosecution of contractor's claim against the Government seeking reimbursement for attorney fees incurred in arbitration proceeding were not reimbursable. Thomas A. Miner And Associates, ASBCA 19002, 77-2 BCA 12,794.

45.30 Claim Requesting Remission of Liquidated Damages.

Contractor held not entitled to recover attorney's fees incurred in his successful claim requesting remission of liquidated damages assessment because ASPR 15-205.31 prohibits the recovery of legal fees incurred in prosecuting a claim against the Government. Proserv, Inc., ASBCA 20768, 78-1 BCA 13,066.

45.31 Post Termination Conferences Not Related to Terminations.

Contractor held not entitled to either legal fees or expert witness fees as a part of termination settlement costs because they were incurred for a post termination conference that did not relate to the termination but to contractor's attempts to persuade the Government to continue using his helicopters. Globe Air, Inc., 78-1 BCA, 13,079.

45.32 Freedom of Information Act Litigation. DAR (ASPR)

15-205.31(d) held not to preclude contractor from receiving reimbursement for attorney fees in action brought under the Freedom of Information Act to obtain documents from the Renegotiation Board because such costs were not within the prohibition against allowance of legal fees for prosecuting a claim against the Government since that prohibition in DAR 15-205.31(d) covers only claims for money or property not to demands or other suits against the Government for other kinds of relief. The Court also held, however, that legal fees for filing an action in the Court of Claims seeking reversal of a Renegotiation Board determination were prohibited and unallowable under DAR 15-205.31(d) as having been incurred in prosecuting a claim against the Government. Grumman Aerospace Corp. v. U.S., Ct. Cl. (15 Nov 1978).

45.33 Setting Up Books and Records and Filing Tax Return, Etc.

Held that contractor's legal and account costs incurred in setting up its books and records, filing tax returns for the partners and other services rendered solely for the benefit of the contractor and not in connection with either contract performance or administration were unallowable. The Housing Authority of the City of New Haven, 78-2 BCA 13,237.

45.34 Partial Termination. Contractor held entitled to reimbursement for legal fees incurred in connection with a review of documents terminating a part of his contract have not for the drafting of clauses pertaining to the unterminated portion of the contract which were never incorporated into the contract for this was unnecessary legal work. Kleinschmidt Division, SCM Corporation, ASBCA 22089, 78-2 BCA 13,363.

45.35 Consultant's Fees for Phase II of A Two Phase Contract.
Costs incurred under the second phase of a two phase contract for consultant fees and general and administrative expenses in excess of contract ceilings on reimbursement were properly disallowed because the contract ceilings applied to both phases, the contract for paying such costs in excess of the ceiling amounts in the event that the Government exercised its option to require performance under phase two of the contract. Environmental Associates, Inc., 77-2 BCA 13,392.

45.36 Termination Claim Preparation Performed in Capacity as Secretary-Treasurer. Held that contractor's Secretary-Treasurer's preparation of his terminations claim while acting in that capacity was not allowable as a separate cost of legal services notwithstanding

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fact that the Secretary-Treasurer was an attorney.

Fil-Oil Company, Inc., ASBCA 23127, 79-1 BCA 13,618.

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46.0 GAINS AND LOSSES ON DISPOSITION OF
DEPRECIABLE PROPERTY OR OTHER CAPITAL ASSETS

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(RESERVED)

47.0 RECRUITMENT COSTS

- 47.1 Direct v. Indirect. Recruitment advertising not allowable as a direct charge, since contractor normally charges to overhead. Capitol Engineering Corp., 68-1 BCA 6833.
- 47.2 Deferred Costs. Contractor entitled to a hearing on the merits regarding contractor's deferrment of recruiting costs over a 24 month period. Government's motion to dismiss denied. Electro-Mechanical Research, Inc., 69-2 BCA 7835. (Appeal subsequently denied in 70-2 BCA 8381).
- 47.3 Printing and Distribution of Brochures. Contractor's costs incurred in printing and mailing brochures to individuals making inquiries about the company held to be reimbursable as recruiting costs. Acrojet General Corp., ASBCA 13372, 7302 BCA 10,164; Gov't. Mot. Recon. den., 73-2 BCA 10,307.
- 47.4 Costs of Meals and Travel by Contractor Employees and Wives. Incurred in connection with alleged recruiting of out of state employees held to be unallowable since the expenditure seems to have been more for

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entertainment and was not in fact required for
recruitment of employee applicants. Lulejian and
Associates, ASBCA 20094, 76-1 BCA 11,880.

48.0 RENTAL COSTS

- 48.1 Build-Lease Agreement. Contractor may include rental costs in overhead for buildings built by another party on land previously owned by the contractor. Contractor's sale of the land and subsequent lease of the building is not a "sale and leaseback", since the contractor never owned the buildings; rather, it is a "build-lease" agreement and the rental is allowable to the extent the amount is reasonable. HRB-Singer, Inc., 66-2 BCA 5903.
- 48.2 Sales and Leaseback. Contractor's purchase and sale of ADPE and immediate lease from the firm to whom ADPE was sold did not constitute a sale and leaseback of the type contemplated by the ASPR; the contractor here is regarded only as a conduit for the performance of pre-existing agreements. Aerojet-General Corp., 70-2 BCA 8494. Leasing costs held reimbursable under ASPR 15-205.48.
- 48.3 Interest Costs. See 31.4.

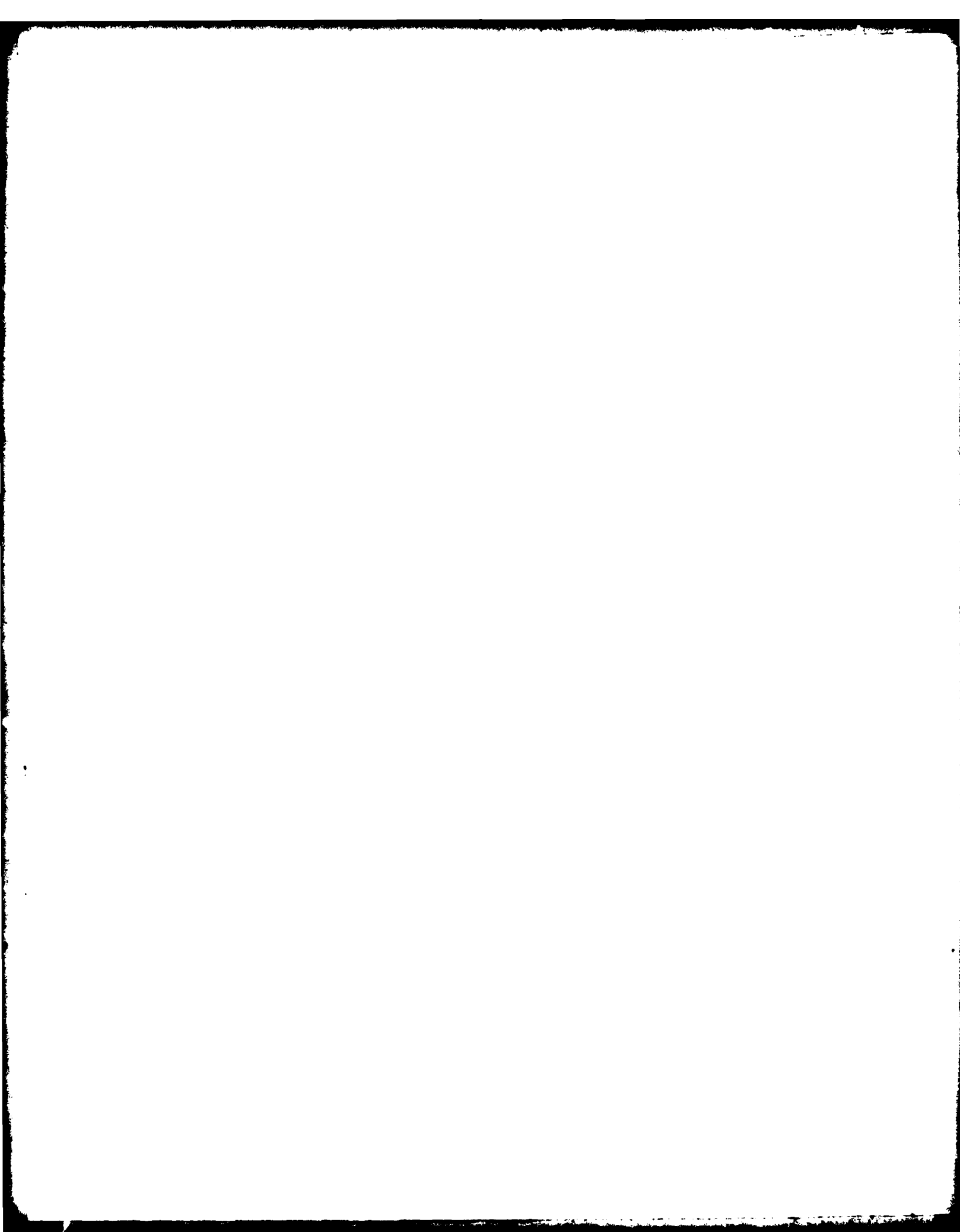
- 48.4 Common Control. ASPR 15-205.34(b) regarding common control applied regardless whether the lessor is an individual or organization or corporation. (Good discussion of the purpose of this provision). Mauch Laboratories, Inc., 1964 BCA 4023.
- 48.5 Common Control. Common control proscribed in ASPR 15-205.34(b), which has as one purpose the prevention of duplication of profit, does not apply to a minority financial interest by the lessee in the lessor. Thus, even though the lessee's operator owned 43.5% of the lessor's stock, and operators of both were brothers and held offices in each other's companies, common control did not exist. A.S. Thomas, Inc., 66-1 BCA 5438.
- 48.6 Common Control. Rental costs limited to normal cost of ownership where stockholders of contractor were husband and wife who were also beneficiaries of trust that rented property to the corporation. Similarly, where the lessor was the sister of the majority stockholder of the contractor, and lessor obtained property from the trust for a nominal consideration and immediately leased back the property to the corporation,

rentals are limited by ASPR 15-205.34 to costs of ownership. Manlabs, Inc., 69-1 BCA 7480.

- 48.7 Common Control - Subsidiary. Rentals paid to wholly owned subsidiary are not allowable in excess of normal costs of ownership. Brown Engineering Co., Inc., 1964 BCA 4101.
- 48.8 "Normal Cost of Ownership". Term does not include return on investment, but does include depreciation, taxes, insurance and maintenance. Ibid.
- 48.9 Common Control. Common control exists where lessor of buildings leased by contractor-corporation is also the majority stockholder of the contractor. Systems Research Laboratories, Inc., 1963 BCA 3765.
- 48.10 Rental from Subsidiary. "ASPR Section XV recognizes that what would normally be disallowed as a cost should be treated as an allowable cost if the fixed fee were negotiated with the understanding that such cost item would be allowed." Thus, where contractor previously rented property from another party, and contractor's subsidiary purchased the property and continued to

rent to the contractor at the same rental, and contractor's CPFF contracts were negotiated on the basis of that rental, the contractor is entitled to include the full amount of the rental in overhead notwithstanding it exceeds cost of ownership. Sanders Assoc., Inc., 65-2 BCA 4942.

- 48.11 Rental v. Deferred Purchase. Board will look at all circumstances in determining whether a lease with option to buy is in actuality a deferred purchase plan. Loral Electronics Corp., 1964 BCA 4439.
- 48.12 Credit for Lease Costs. Where Government reimbursed contractor for liquidated damages which later were refunded (or credited) to contractor when contractor exercised option to buy, Government is entitled to a credit since the liquidated damages lost their character as part of the lease cost and became part of the acquisition cost. University of Illinois, 69-1 BCA 7638.
- 48.13 Personal Residence. Contractor who uses personal residence for business purposes may include "charges in nature of rent" in overhead, not to exceed costs of ownership (decided under FPR). Gilmatic, 68-2 BCA 7341.



- 48.14 Office Space. Pre-1960 ASPR cost principles: Air Products, Inc., 1962 BCA 3451.
- 48.15 Idle and Excess Facilities Under Lease. See 271. and 27.2.
- 48.16 Idle Facilities - Termination for Convenience. Contractor's lease rental costs incurred on facilities idled by convenience termination held reimbursable as part of termination claim. Manuel M. Liodas, Trustee In Bankruptcy, ASBCA 12829, 71-2 BCA 9015.
- 48.17 Sale and Leaseback of Facility. R&D contractor who had entered into sale and leaseback of a plant facility used in performing his CPFF contract held entitled to reimbursement of rental amounts paid to financier who leased facility to contractor only to the extent that such rental costs did not exceed the amounts contractor would have received had it continued to retain title to the facility. Control Data Corp., ASBCA 16448, 72-2 BCA 9684. Motion for reconsideration denied, 74-1 BCA 10,410.

49.0 RESEARCH AND DEVELOPMENT COSTS

- 49.1 Reasonableness. In the absence of a bilateral advance agreement to cost-share, contractor is entitled to allowance of 100% of IR&D costs except to the extent the Government can prove that the total IR&D expenditures were unreasonable. ASPR 15-205.35(h) does not make allowance of 100% of costs unreasonable per se. (Note: contractor's total IR&D expenditures were \$8,079 or 2.5% of sales). Technical Communications Corp., 67-2 BCA 6525. Foreign Attack Submarine and an Arctic Submarine Tanker, IR&D Costs: Contractor's IR&D costs incurred in developing a foreign attack submarine held to involve sufficient attempts to advance the state of the art to make them allocable to and allowable costs under its Government cost contracts. General Dynamics Corp., Electric Boat Division; ASBCA 18503, 75-2 BCA 11,521.
- 49.2 Cost Sharing Arrangement. ASPR 15-205.35(c), in defining IR&D, does not exclude R&D conducted by the contractor under a cost-sharing arrangement with private concerns. "Common sense" dictates that, if Government would have recognized 100% of the costs as IR&D had there been no

contribution from private parties, Government should not object to a procedure which reduces the cost to the Government. Also not unallowable as a loss contract under 15-205.19 (see 33.1). (Note: 2:1 decision with caveat that case is limited to particular facts). General Dynamics Corp., 66-1 BCA 5680. (see 4.4).

- 49.3 Demonstration Aircraft. See 12.8.
- 49.4 Prototype or Experimental Airplane. See 12.6.
- 49.5 Design and Development Costs in B&P. See 12.5.
- 49.6 Capitalization (Deferred R&D). See 33.2 and 33.3.
- 49.7 Effect of Novation. Contractor, transferee under novated contracts, cannot include parent corporation's service (G&A) and research (IR&D) charges in overhead, even though such allocations by the parent to the subsidiary - contractor are in accordance with established practice, since such additional costs are barred by the novation (no evidence Transferor would have incurred such costs). Irrelevant that costs would be allowable under new (non-novated) contracts and amendments to the novated contracts. ITT Gilfillan, Inc., 68- BCA 7086.

- 49.8 Direct v. Indirect. See 12.2.
- 49.9 Product Lines. Independent development performed for material handling vehicles is not allocable under either pre-or post-1960 ASPR to Government cost-type contracts because not specifically applicable to the contract (pre-1960 ASPR) and not "related to the product lines for which the Government has contracts" (current ASPR), where item is not sold for military purposes (even though several were sold to the Government for trash removal), differs from military products being developed, and is unrelated to products under contract. Borg Warner Corp., 1964 BCA 4507 (rehearing denied 65-1 BCA 4622).
- 49.10 As G&A. IR&D may properly be included in B&A cost pool and allocated to CPFF R&D contract; Government cannot require that IR&D direct labor cost be included in the G&A cost-of-sales base. (Also see 1.3). National Research Corp., 1962 BCA 3526.
- 49.11 Allocation of Overhead and G&A to IR&D. Contractor need not allocate contributing engineering expense to his IR&D since such expense was not generated or occasioned by the IR&D program. Nor must G&A be allocated to the

IR&D, since contractor's established practice not to do so constitutes a "generally accepted accounting practice." Curtiss-Wright Corp., 65-2 BCA 4960.

- 49.12 G&A v. Overhead. See 12.1.
- 49.13 Pre-1960 ASPR Cost Principles. IR&D is allowable to the extent applicable to supplies or services covered by contract and specifically authorized. Philco-Ford Corp., ASBCA 14251 (1 Oct 70); Bell Aerospace Corp., 65-1 BCA 4567; Martin-Marietta Corp., 68-1 BCA 6752; Air Products, Inc., 1962 BCA 3451.
- 49.14 Retroactive Effect of Agreement. For IR&D cost to be allowed in overhead, the IR&D agreement must be entered into prior to the contract being executed and the costs being incurred and such costs cannot be made allowable under ASPR 15-205.35 by an IR&D agreement negotiated after the costs have been incurred. Philco-Ford Corp., ASBCA 14251, 70-2 BCA 8499.
(N.B.: Case involved pre-1960 ASPR)
- 49.15 Reliability Evaluations and Studies. Contractor held not entitled to include in overhead or G&A and have allocated to Government contracts performed by its

engineering division costs incurred in preparing reliability evaluations and conducting studies under his IR&D program on two military vehicles not covered by nor related to any vehicle produced under any Government contract or in his engineering division where IR&D ceiling had been reached. Allison Division, General Motors Corp., ASBCA 15012, 71-2 BCA 9158.

- 49.16 Development and Improvement of Computer Software. Held that costs incurred by contractor in the development and improvement of computer software, comprised of a set of instructions in a high mathematical language that provided interpretation and analysis of data loaded in the computer, were not independent development costs and unallowable under ASPR 15-205.35(a)(3), as found by the contracting officer, but were "tool design and improvement costs". Also held that to the extent the software was considered a major asset, the cost of its development could be amortized and that the ongoing improvement of it, if relatively minor, was reimbursable as a current production engineering cost. Battelle Memorial Institute, ASBCA 20626, 78-1 BCA 12,884, aff'd. on recon. at 78-1 BCA 13,183.

50.0 ROYALTIES AND OTHER COSTS
FOR USE OF PATENTS

- 50.1 Self-Royalties. Ten percent royalty paid by corporate contractor to the corporation's only two stockholders pursuant to a royalty agreement between the corporation and the stockholders is allowable for purpose of redetermining the price of an FPR contract. Government's argument that ASPR 15-205.36 prohibits self-royalties rejected by the Board. Channell Splicing Machine Co., 66-2 BCA 6061.
- 50.2 Patent Royalties. Contractor held entitled to reimbursement costs incurred in paying royalties on certain patents owned by RCA and used by contractor in performing its Government contracts. Raytheon Company, ASBCA 16097, 73-1 BCA 9945.
- 50.3 Royalties Paid on Patent "Sale and Leaseback" Arrangement. Held that contractor could recover the amortized cost of royalties paid by him to an investor under a patent licensing agreement even though the agreement in effect constituted a sale and leaseback transaction that would ordinarily limit the amount recoverable to what would be allowed had he retained title to

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the patent being used because of the fact that the contracting officer had agreed by the terms of the contract and at the time of its execution that such royalty costs would be paid. Educational Computer Corporation, ASBCA 20749, 78-1 BCA 13,111.

51.0 SELLING COSTS

51.1 Commissions; Commercial and Government Cost Pools.

Ten to twelve percent commissions paid on sales are reasonable, allocable, and allowable under post-Revision 50 ASPR 15-205.37. Commissions need not be charged direct to the contracts involved. ASPR contemplates two selling expense cost pools ("Government" and "Other"), and each should be distributed (allocated) to its own business (base). (However, due to "special circumstances", Board permitted contractor to allocate all of its selling expense to all of its business). Cubic Corp., 1963 BCA 3775.

51.2 Prototype Aircraft. Building of prototype not selling expense, since not directly attributable to marketing. Further, if considered a media for selling, would be unallowable as advertising. General Dynamics Corp., 68-2 BCA 7297 (see 12.6).

51.3 Breadbaords and Mockups. Allowable as B&P; may also be allowable as selling costs. General Dynamics Corp., 65-2 BCA 5067. (see 12.7).

- 51.4 Demonstration Aircraft. Not allowable as selling costs since not directly attributable to marketing efforts. General Dynamics Corp., 70-1 BCA 8143. (see 12.8).
- 51.5 Pre-1960 ASPR. Selling and distribution expenses of contractor's commercial division (including participation in air shows) are allowable and allocable to Government contracts under ASPR in effect prior to 1 July 1960. General Dynamics Corp., 1964 BCA 4133.
- 51.6 Benefit to Government. Contractor's field marketing expenses qualified as allowable selling expenses under 15-205.37 since benefited Government in general (prior to 1960) selling expenses had to relate to the "contract products". Contractor permitted to change method of allocating selling expenses due to ASPR change. Federal Electric Corp., 67-2 BCA 6416.
- 51.7 Miscellaneous Pre-Contract Costs. See 12.9.
- 51.8 Secretly Developed Aircraft. Contractor's costs incurred in secretly developing its "charger" aircraft held not allowable as selling costs under its Government contracts. General Dynamics Corp. v. U.S., 18 CFF 82,332 (Ct. Cl. 1973).

52.0 SERVICE AND WARRANTY COSTS

- 52.1 Absence of Guarantee or Warranty Clause. In the absence of a Guarantee or Warranty clause in the contract establishing liability or actual costs incurred, product guarantee or warranty costs are unallowable. Channell Splicing Machine Co., ASBCA 10209, 66-2 BCA 6061.

53.0 SEVERANCE PAY

- 53.1 Established Policy. Contractor is entitled to recover severance pay made necessary by termination of employment without prior notice, where the failure to give notice was reasonable, and the payments were pursuant to contractor's established (although unwritten) policy. Telecomputing Services, Inc., 68-1 BCA 7023.
- 53.2 Retroactive Accrual. ASPR 15-205.39 requires that, with respect to abnormal or mass severance pay, the Government do whatever is necessary to "achieve equity to both parties" and to "participate, to the extent of its fair share." Thus, contractor may retroactively adjust its 1962 overhead costs to include a reserve for mass severance pay expected in 1963-64, where 1962 was still an open year, and contractor did not pay its usual Christmas bonus in 1962 in order to provide funds for the later severance payments. Fairchild Hiller Corp., 69-1 BCA 7657.
- 53.3 Unestablished Policy. Severance payments made prior to establishment of policy are unallowable (ASPR

language similar to current provision). National Fireworks Ordinance Corp., 65-2 PCA 1067.

53.4 Termination for Convenience. Contractor held entitled to reimbursement for costs incurred in making mass severance payments to its employees in accordance with its established policy necessitated by their severance after closing of plant caused by termination of its contract for convenience of Government. Systems Development Corp., ASBCA 16447, 73-1 BCA 9788.

53.5 Closing of Contractor Laboratory. Contractor held entitled to reimbursements for severance payments made to employees upon their termination of severance following cut back in funds and closing of contractor laboratory where they worked. Trustees of Columbia University, ASBCA 15578, 73-1 BCA 9777.

53.6 Supervisory Employee of Subcontractor. Contractor held not entitled to reimbursement for severance pay given to a supervisory employee of a subcontractor because the subcontractor had no written policy concerning payment of severance pay to salaried employees and had made the payment to the employee only in response to a judgment obtained by the employee in local court which found that it was not a subcontractor. F/U-O/B- The Wackenhut Corp., 75-1 BCA 11106.

53.7 Change From Charging Severance Pay Accruals To All Work In Plant To Charging Actual Payments Against A Specific Contract. Contractor held not entitled to claimed reimbursement for employee separations allowance (severance pay) following a convenience termination where its normal treatment of such costs was to book the accruals for them as an expense and to charge them against all work performed in its plant instead of billing its actual payments of such costs against specific contracts, which it had charged its normal method of allocation to permit under its terminated contract here involved. Detroit Diesel Allison Division, General Motors Corp., ASBCA 20199, 77-1 DCA 12,414.

53.8 Arbitration Award To Dismissed Employees. Contractor held not entitled to recover severance pay as the cost of an arbitration award gained by one of his employees because the arbitration and dismissal provisions of the terminated employee's contract were not reimbursable under the contractor's contract with the Government since the Government could, under that contract, recall or have removed without cause any employee the contractor had not agreed to be liable

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for any arbitration award made pursuant to the
terms of any agreement between contractor and
any employee of his. Thomas H. Miner And Associates,
ASBCA 19002, 77-2 BCA 12,974.

54.0 SPECIAL TOOLING AND SPECIAL
TEST EQUIPMENT COSTS

- 54.1 Pre-Contract Costs. Cost of special tooling not allowable as a direct cost to CPIF contract since not allowable as pre-contract costs. United Technology Center, 68-2 BCA 7350.
- 54.2 Special Tooling Costs Incurred Under Letter Contract For Development and Production of Incendiary Bombs. Were held to be allowable costs. Americal Electric, Inc., ASBCA 16635, 76-2 BCA 12,151. Also see Rockwell International Corp., supra (44.5)

55.0 TAXES

- 55.1 Retroactive Accrual. Contractor cannot in 1964 make a journal entry increasing accrual for 1962 real property tax liability, where not in accord with IRS policy, since would give contractor option to change its method of accruing tax liabilities when to his advantage. Fairchild Hiller Corp., 69-1 BCA 7657.
- 55.2 IRS Approval. Unallowable costs (e.g., costs not incurred in performance of contract) are not made allowable simply because IRS accepts for tax purposes. R.S. Topas & Co., Inc., 68-2 BCA 7399 (see 60.2).
- 55.3 Federal Unemployment Tax. Is a "Social Security Tax" for purpose of clause prohibiting overhead and profit on latter. Blake Construction Co., 1964 BCA 4409 and 65-1 BCA 4557.
- 55.4 Adjustment; Overhead and Profit. Adjustment under FP contract which provides for increase in the event contractor is required to pay certain taxes is limited to the amount of such taxes and contractor may not add overhead and profit thereto. Brezina Construction Co., 67-1 BCA 6155.

55.5 Commercial Inventories. Under ASPR applicable prior to 1962 Revision 11, California personal property taxes assessed against contractor's commercial inventories may be allocated through overhead to Government FPI contracts, since Government contracts benefit from such tax payments. Lockheed Aircraft Corp., v. U.S., Ct. of Cls., 375 F2786(1967) (reversing 1964 BCA 4056). However, under ASPR in effect after 1962 Revision 11, taxes on commercial inventory may be allocated only to commercial contracts. The Boeing Co., 69-2 BCA 7898 (affirmed on rehearing 70-1 BCA 8298).

55.6 Allocation To Cost Type Contracts. ASPR 15-205.41(a)(v) does not require separate overhead pools and rates for Government cost reimbursement and Government fixed price contracts. Where it is contractor's established practice to have one pool and the same bidding rates and Government has negotiated FP contracts on that basis, contractor may allocate personal property taxes generated by contractor-owned inventories under Government FP contracts to all Government contracts, including cost reimbursement types, notwithstanding latter did not generate such costs (since cost-reimbursement inventories are Government-owned and

therefore tax-exempt). The reference to "such work" in subparagraph (4) refers to "Government work" and not to "Government fixed-price contracts". Martin Marietta Corp., ASBCA 14159, 71-1 BCA 8783.

55.7 Franchise Taxes - Allocation. Allocation of franchise taxes assessed on basis of corporate profit to only those profit centers showing a profit during the year giving rise to the assessment, with credits to those showing losses, held to be proper and in accordance with ASPR Section XV, notwithstanding an across-the-board allocation would have resulted in lower costs to the Government. Univac Division of Sperry Rand Corp., 70-2 BCA 8555.

55.8 California Franchise Tax. Since the tax is based on the privilege of doing business in the State, and is not an income tax, tax must be allocated among the corporate groups based on their contribution to the tax in accordance with the formula used to determine the tax, and divisions operating at a loss, which contributed to the tax under the formula, must receive an allocation of the tax. General Dynamics Corp., 69-2 BCA 8044.

- 55.9 Credit. Tax refund is a reduction of costs, not income, and Government should share in the refund in the same proportion as Government shared in the costs in the year involved. Reason for the refund (lowered profit due to Renegotiation Act proceeding) is irrelevant. Northrup Corp., 1964 BCA 4102. See also Grumman Aerospace Corp., 75-2 BCA 11,492.
- 55.10 Contribution. Voluntary payment made to ensure good relations is not allowable, even though was not a contribution in the charitable sense (see 23.5). The Boeing Co., 69-2 BCA 7980.
- 55.11 Legal Fees. Legal costs for effort to obtain favorable classification of the corporation for state tax purposes are allowable since effort resulted in lower costs to the Government. Navgas, Inc., 65-1 BCA 4533.
- 55.12 Pennsylvania Corporate Net Income Taxes. See Air Products, Inc., 1962 BCA 3451 (pre-1960 ASPR decision).
- 55.13 Change in Accounting Method of Handling Franchise Taxes. See American Electric, Inc., ASBCA 16635, 76-2 BCA 12,151.

- 55.14 State Franchise Taxes Based on Non-Government Intrastate Business Contractor. Held not allowable to nor reimbursable under Government contract because contractor had already recovered such tax costs by charging them direct to and including them in the premium charged to its commercial customers. Blue Cross Association, ASBCA 20080, 76-2 BCA 12,112.
- 55.15 State And Local Taxes. Contractor held entitled to be reimbursed for state and local taxes costs through its overhead charged to its Government cost contracts. The Boeing Company, ASBCA 19224, 7701 BCA 12,371.
- 55.16 Taxes Paid In Control Delay Period. Contractor held entitled to be reimbursed for real estate taxes it had to pay on a facility as a result of Government caused delays, and it was also allowed a profit of 10% on these tax costs and others incurred as result of the Government delays. Coley Properties Corp., 77-1 BCA 442.
- 55.17 "Imputed Tax". Contractor held not entitled to reimbursement for his payment to a subsidiary if the amount of state corporate franchise tax that would have been payable by the contractor if he had not

filed a consolidated tax return with his subsidiary which had suffered a sizeable loss. Although the tax cost was properly "imputed" to the subsidiary, this tax liability was not a charge levied by the state, was never paid to the state, and did not represent a future obligation of contractor to make such a payment. Physics International Company, ASBCA 17700, 77-2 BCA 12612.

55.18 Advalorem Taxes. Held that a post office construction contractor was not entitled to be reimbursed by the Government for advalorem taxes paid to a town during the construction period because the agreement between the contractor and the Government limited the Government's liability to taxes on the land and buildings to those imposed after construction was completed and during the term of the Government's lease of the building. Kearny Post Office Associates, 77-2 BCA 12,710.

55.19 FICA, Unemployment Taxes, Etc. Contractor held entitled to reimbursement for FICA, state and federal unemployment taxes, and state workmen's compensation taxes. W.F. Sigler & Associates, 78-1 BCA 13,011.

- 55.20 Carry Back Loss As Tax Credit. Where a contractor was allowed by the state of New York to "carry back" to the year 1968 the loss it suffered in 1971 and obtain a refund of some of the franchise taxes it paid to the state in 1968, the court held that the ASBCA had correctly ruled that since the contractor had received a refund of some of its franchise taxes paid in 1968 the Government was entitled to be credited with that reduction against its contracts performed by contractor in 1968 because the ASPR cost principles and the "Allowable Cost" clause of the contracts so provided. Contractor's contention that because the loss on which the 1968 refund it received had been based had occurred in 1971 that the Government's contracts for 1971 should have the refund credit allocated to them instead of its 1968 contracts was rejected. Grumman Aerospace Corporation v. U.S., Ct. Cl. (15 Nov 1978).
- 55.21 Social Security Tax Increase. Contractor held not entitled to adjustment in the total price of his fixed price contract to cover an increase in the Social Security Tax (FICA) occurring after contract was executed for no provision if the contract authorized such an increase in contract price. Tri-State Maintenance, Inc., ASBCA 22852, 78-2 BCA 13,430.

55.22 State And Local Taxes Clause. Contractor held not entitled to an equitable adjustment to cover the cost of a New Mexico gross receipts tax imposed on him because the Federal, State and Local Tax clause of his contract placed the burden on him of determining and paying all such taxes that might be levied on him as contractor. Eller Construction, Inc., ASBCA 22654, 78-2 BCA 13,511. See also Sarkisian Brothers, Inc., 79-1 BCA 13,559.

56.0 TERMINATION COSTS

- 56.1 Accounting Costs and Legal Fees. Accounting and legal costs incurred in connection with termination and preparation of contractor's termination claim are allowable if incurred in reasonable amounts. Sundstrand Corp., ASBCA 9112, 65-1 BCA 4653. See also Bailey Specialized Buildings, Inc., ASBCA 10576, 71-1 BCA 8699; Atlantic, Gulf & Pacific Co. of Manila, ASBCA 13533, 72-1 BCA 9415; Southland Mfg. Corp., 75-1 BCA 11,077.
- 56.2 Unabsorbed Overhead. Contractor not allowed to recover unabsorbed overhead by including same in his termination claim where entire contract was terminated for convenience of Government. Technology Inc., ASBCA 14083, 71-2 BCA 8956.
- 56.3 Lease Cancellation Charges. Contractor was allowed reimbursement for portion of lease cancellation charges where all of his contracts were terminated at the same time for convenience. Manuel M. Liodas, Trustee In Bankruptcy, ASBCA 12829, 71-2 BCA 9015.

- 56.4 Contingent Fee. Since payment of any part of a contingent fee included in termination claim was prohibited, contractor could not recover amount equal to the reasonable value of services performed. Manuel M. Liodas, Trustee In Bankruptcy, supra.
- 56.5 Forced Sale of Warehouse and Truck. Contractor's costs of forced sale of warehouse and truck purchased at direction of contracting officer not allowed to be expensed under its termination for convenience claim. American Packers, Inc., ASBCA 14275, 71-1 BCA 8846.
- 56.6 Employee Retraining. Contractor's cost of retraining employees after terminations of its contract are not allowable as continuing costs under ASPR 15-205.42(b) as a part of his termination claim or under any other provision of ASPR. Engineering Systems, Inc., ASBCA 18241, 74-1 BCA 10,492.
- 56.7 Litigation Costs. Contractor costs incurred in defending against a suit by a subcontractor held to be allowable under its termination claim under ASPR 15-205.42(f) as a part of its overhead costs included in such claim. R.D. Mounts, Inc., 75-1 BCA 11,077.

- 56.8 Interest Costs. Contractor interest on its bank and SBA loans continuing after contract had been wrongfully terminated by Government held unallowable as part of its termination claim. Southland Mfg. Corp., ASBCA 16830, 75-1 BCA 10,994.
- 56.9 Idle Equipment Costs. Contractor's cost of idle equipment which became idle following Government's wrongful termination of its contract held allowable and properly includable in its termination claim. Southland Mfg. Corp., supra (56.8)
- 56.10 Winding Up Costs. Contractor held entitled to reimbursement for its overhead costs incurred in winding up affairs under its contract following termination of its contract. Southland Mfg. Corp., supra (56.8)
- 56.11 Records Shipping and Reconversion. Contractor held entitled to reimbursement under ASPR 15-205.42(f) for the reconversion and shipping of its records following termination of its contract. Southland Mfg. Corp., supra (56.8)

- 56.12 Rental Costs and Judgment for Rental. Contractor held entitled to reimbursement under ASPR 15-205.42(e) and (f) for rents paid and satisfaction of a judgment for unpaid rents incurred following the Government's wrongful termination of its contract. Southland Mfg. Corp., supra (56.8)
- 56.13 Costs Resulting From Loss of Useful Value of machinery, special tooling, and equipment upon convenience termination of contract where such item had been fabricated solely for use in performing terminated letter contract and could not be used for any other purpose were held to be reimbursable. American Electric, Inc., ASBCA 16635, 76-2 BCA 12,151.
- 56.14 Post Termination Conference Not Related to the Termination. Contractor held not entitled to either legal fees or expert witness fees as a part of its termination settlement costs where such fees were paid for attendance at a post termination conference at which the contractor attempted to persuade the Government to continue using its helicopters but did not discuss the particular contract that had been terminated nor the termination claim he would submit under it. Globe Air, Inc., 78-1 BCA 13,079.

- 56.15 Partial Termination (Legal Fees). See Kleinschmidt
 Division, SCM Corporation, ASBCA 22089, 78-2 BCA
 13,363.
- 56.16 Preparation of Termination Claim By Attorney Acting In
 Capacity of Secretary - Treasurer of Contractor Corporation.
 Held that costs of services performed by an attorney
 in his capacity as Secretary-Treasurer of contractor
 corporation were not separately reimbursable as
 attorney fees. Fil-Oil Company, Inc., 79-1 BCA 13,618.
 This case also held that in termination settlement
 contractor could not receive more for services person-
 nel by its principal personnel than has actually paid
 for such individuals notwithstanding contractor's
 argument that the company was a start-up company and
 the salaries actually paid were much below the level
 of those being generally paid by for the same period
 of services by other firms.
- 56.17 Delay In Making Partial Termination Settlement Payment.
 Contractor held not entitled to claimed interest on
 the amount of his termination claims under either
 the contracts Payment of Interest On Contractor's
 Claim clause, ASPR 7-104.35, or ASPR 7-103.21 for

failure of Government to pay any part of his claim until his inventory had been verified and an audit made because of the "Payment of Interest On Contractor's Claim" clause contained in the contract did not apply since there was no dispute over any underlying claim, the progress payments provision did not apply since the contract had been terminated, and the contractor had not borrowed moneys to finance the remaining contract work following the partial termination. KDI Precision Products, ASBCA 21522, 79-1 BCA 13,640. This case also held that the contractor was not entitled to recover his unabsorbed post termination overhead following the partial termination because such unabsorbed post termination overhead costs were not shown to have been incurred as a result of or caused by the partial termination.

57.0 TRADE, BUSINESS, TECHNICAL AND
PROFESSIONAL ACTIVITY COSTS

- 57.1 Memberships and Incidental Expenses. Memberships in professional organizations, and reasonable expenses related thereto, including attendance at meetings, are allowable under (old) ASPR 15-204(1). General Analysis Corp., 1962 BCA 3337.
- 57.2 Membership Dues and Attendance At Meetings. Contractor's costs incurred for membership in and attendance at meetings of Society of Experimental Test Pilots held allowable and reimbursable. The Boeing Company, ASBCA 14370, 73-2 BCA 10,325.
- 57.3 Lunches and Dinners. See Lulejian and Associates, Inc., supra (4.15).
- 57.4 Air Fares To and From Hawaii. Air fares for contractor's president and vice president and their wives to and from Hawaii to allegedly enable them to be alone to discuss company business disallowed as entertainment costs since no primary justification for the trip for business purposes was established and officials could have held meeting to discuss business matters without

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making the trip. Lulejian and Associates, Inc.,
76-1 BCA 11,880.

57.5 Study To Evaluate Pension Plan Investments and Management.

See Lulejian and Associates, Inc., supra (38.4)

58.0 TRAINING AND EDUCATIONAL COSTS

- 58.1 Employees' Children. Cost of tuition assistance for children of top-level employees are allowable since both employer and employees treated the payments as compensation for tax and other purposes. Cornell Aeronautical Laboratory, Inc., 1964 BCA 4204 (reversing earlier decision in 1964 BCA 4047).
- 58.2 Salaries. Under pre-1960 ASPR, contractor was entitled to include in overhead the salaries of employees attending post-graduate courses during working hours were courses related to Government R&D. Western Electric Co., Inc., 69-1 BCA 7660.
- 58.3 Sloan Fellowship Costs. Costs of contractor managerial personnel's attending Harvard Business School graduate program under Sloan Fellowships held allowable. The Boeing Co., ASBCA 12731, 69-2 BCA 7980.
- 58.4 Retraining After Termination. See 56.6.

59.0 TRANSPORTATION COSTS

- 59.1 Overhead v. G&A. Expenses for inspection and shipping, normally charged by other contractors to overhead, may be charged instead to G&A where consistent with contractor's practice. Missile Systems Corp. of Texas, 1964 BCA 4434.

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60.0 TRAVEL COSTS

- 60.1 Company Officer. Travel expenses incurred by corporation's President are allowable even though the travel was not required to perform Government contracts. Vare Industries, Inc., 68-2 BCA 7120.
- 60.2 Performance of Contract. Contractor may not charge Government CPFF contract for travel costs incurred to bring employees home on weekends to visit their families, since do not represent costs incurred in performance of the contract. Irrelevant that IRS accepts for tax purposes. (Note: C.O. approval of travel was required but not obtained). R.S. Topas & Co., Inc., 68-2 BCA 7399 (see 1.5.4 and 55.2).
- 60.3 Direct v. Indirect, C.O. Disapproval. Travel costs of employee and dependent are allowable as direct cost since the travel was of the type contemplated for reimbursement by the contract. Contracting Officer's refusal to grant approval is irrelevant since he had no right to withhold such approval under the circumstances. Cornell University, 68-1 BCA 6836 and 6837 (see 1.5.1 and 1.5.7).

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- 60.4 Construction Contracts - Home Office Expense. Salaries and travel expenses required to negotiate definitive CPFF contract under a letter contract and incurred in arriving at an agreement on administrative procedures are "minor or incidental services" under 15-402.3, are included in the fixed fee, and are not recoverable as allowable costs. Raymond International & Knudsen of Asia, 65-1 BCA 4843.
- 60.5 ASBCA Appeal. Transportation and other expenses incidental to prosecution of appeal to ASBCA are unallowable. Keco Industries, Inc., 1963 BCA 3992.
- 60.6 Pre-Contract Travel; Direct v. Indirect. See 12.9.
- 60.7 Incidental to Entertainment. Travel costs associated with unallowable entertainment is also unallowable. Capitol Engineering Corp., 68-1 BCA 6833. See also Lulejian and Associates, Inc., 76-1 BCA 11,880.
- 60.8 Incidental to Recreation Programs. Unallowable where precluded by contractor's own employee manual. Aro, Inc., 69-2 BCA 7868 (see 25.2).

- 60.9 Legal Obligation. Where contractor, under a terminated contract, paid travel and related expenses over and above its established policy because of a moral - not legal - obligation to its employees, such additional amount is not allowable. The payment was a "one shot deal", not applicable to contractor's commercial business or even to other Government contracts (pre 1960 ASPR). Douglas Aircraft Co., Inc. 60-2 BCA 2844.
- 60.10 Moving Expenses. See 24.10.
- 60.11 Return From Foreign Job Site to U.S.A.. See 39.1 through 39.4.
- 60.12 Moving Employees at Their Request. Contractor held not entitled to reimbursement for costs incurred in moving two of its employees at their request to a different location because it was not obligated in any way to do so and their movement was in no way required for contract performance. Southland Mfg. Corp., ASBCA 16830, 75-1 BCA 10,994.
- 60.13 Moving Employees To Contract Job Site. Contractor held entitled to reimbursement for travel costs incurred in having its employees travel from their homes to

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the contract job site. Cunningham/Short/Berryman &
Associates, 77-2 BCA 590.

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61.0 ECONOMIC PLANNING COSTS

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62.0 ADPE LEASING COSTS

62.1 Sale and Leaseback. See 48.2.

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63.0 DEFERRED RESEARCH AND DEVELOPMENT COSTS

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64.0 COST OF MONEY FOR FACILITIES CAPITAL
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| Vanguard Pacific, Inc ASBCA 21193, 76-2 BCA 12,140 | 31.1 |
| Vare Industries, Inc 68-2 BCA 7120 | 7.1 ; 16.2 ; 27.2 ; 60.1 |
| Viewlex Inc 71-1 BCA 8692 | 35.1 |
| Virginia Electronics Co, Inc 77-1 BCA 12,393 | 38.5 |
| Walsh v. U.S. 121 Ct. Cl. 546 | 42.2 |
| Webster-Martin, Inc 70-1 BCA 8120 | 7.18.6; 11.3 ; 17.5; 21.8 |
| West, Lowell O. Lumber Sales 67-1 BCA 6101 | 24.4 |

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| Western Electric Co, Inc 68-2 BCA 6793 | 20.2 |
| Western Electric Co, Inc 69-1 BCA 7660 | 35.1 |
| Western Electric Co, Inc 79-1 BCA 13,550 | 22.7 |
| Western Electric Corp 68-1 BCA 6793 | 35.1 |
| Western General Services, Inc 77-1 BCA 12,278 | 45.3 |
| Westinghouse Electric Corp 66-1 BCA 5687 | 36.3 |
| Westinghouse Electric Corp 67-1 BCA 6361 | 36.11 |
| Westinghouse Electric Corp 69-2 BCA 7858 | 9.5.5 |
| Westinghouse Electric Corp 78-1 BCA 13,133 | 44.7 |
| William C. Cox, Inc 79-1 BCA 13,582 | 31.17 |
| Wolf Research and Development 69-2 BCA 8017 | 8.13.4 |
| Wright Co., Fred D., Inc 1962 BCA 3432 | 1.6 ; 8.12.7; 27.3 |
| W.S. Meadows Engineering, Inc 78-2 BCA 13,514 | 16.16 |
| Yardney Electric Corp 66-2 BCA 5760 | 1.2; 36.12 |
| Zero Manufacturing Co 70-2 BCA 8489 | 8.3 ; 8.4 ; 8.13.3 |

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| 18 U.S.C. 1913 | 23.3 |
| 35 Comp. Gen. 434 | 9.5.9 |
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